FEDERAL TRADE COMMISSION

Comments Regarding Retail Electricity Competition	)	**No. V010003**

EXELON CORPORATION

Comments Regarding Retail Electricity Competition

I. Introduction and Summary of Exelon's Comments on Retail Competition

Exelon Corporation ("Exelon") is a newly-formed public utility holding company for a diverse group of companies, many, but not all, of which are involved in various aspects of the electric market in several states. The Exelon companies include (i) regulated "full service" electric utilities with service territories that include metropolitan Chicago, Illinois (Commonwealth Edison Company ("ComEd")) and Philadelphia, Pennsylvania (PECO Energy ("PECO")); (ii) a large wholesale generation company that controls an extensive, diverse portfolio of generating assets and which actively buys and sells electricity and associated products in the wholesale markets (Exelon Generation Company, LLC ("ExGen")); (iii) an entity that sells generation in competitive retail markets ("Exelon Energy"); (iv) numerous businesses which provide other energy-related services and (v) a wide-ranging group of large and small commercial concerns that are electric consumers and which, like all other businesses, desire to control their costs to the greatest extent possible. Accordingly, Exelon provides an integrated view of retail electricity competition from a perspective shared by few others.

Through ComEd and PECO, which together serve over 5 million customers in Illinois and Pennsylvania, Exelon has considerable experience in two states that have restructured their retail energy markets to allow customers to choose their electric service provider. Through Exelon's PowerTeam, which is the nation's fifth largest wholesale power trader, Exelon is also a very active participant in the wholesale power trading market. Through Exelon Energy, which operates as, among other things, an independent retail electricity supplier in Illinois, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania and other areas in the Midwest and Northeast United States, Exelon is engaged essentially as a new market participant in those states.

Among the most current deregulation issues are the recent problems in California. Importantly, the crisis there is not a signal that competition and deregulation have failed. Instead, it provides a forceful lesson on the importance of doing it right. As described in greater detail below, while not without the inevitable start-up issues, Illinois and Pennsylvania have been successful in opening their respective markets to competition. The California situation provides

an interesting contrast to those states. Situations like that in California suggest that deregulation should not be left solely to the states.

It is vitally important that we have adequate electricity supplies to serve a healthy, growing economy. It is also vitally important that we have robust, healthy, wholesale electricity markets. Most observers believe that retail market issues are best addressed by state authorities. However, wholesale market issues are clearly the responsibility of the Federal Energy Regulatory Commission ("FERC"), the Congress and other Federal officials.

A. Federal Issues

Exelon believes there are a number of outmoded statutes on the books that Congress should address in order to ensure that our nation has a thriving, viable competitive electricity market. For example, the Public Utility Holding Company Act ("PUHCA") and the Public Utility Regulatory Policies Act of 1978 ("PURPA"), inhibit development of electricity supplies by limiting and restricting market entrants. In addition, there are provisions in the Internal Revenue Code that are outmoded in light of recent regulatory and market developments. In particular, Congress should address the tax consequences of selling transmission assets to form Regional Transmission Organizations ("RTOS") and depreciation schedules for utility assets. Action on these fronts is long overdue and would facilitate the development of more robust, competitive wholesale markets to the benefit of all consumers.

B. Overview of Pennsylvania Market

The Pennsylvania Electricity Generation Customer Choice and Competition Act (the "Pennsylvania Competition Act") took effect in December 1996. All retail customers have had the right to choose their electric supplier since January 2000. To date more than 35% of the residential customers of PECO receive service from a competitive supplier, while more than 35% of the commercial load, and more than 50% of the industrial load, is served by competitive suppliers. The PECO service territory has more customers in the competitive market than any other U.S. electric distribution company. One reason for the higher rate of switching in Pennsylvania is that customers were given greater incentives to switch and a certain number of customers were required to switch suppliers.

Pennsylvania law contains protections for retail customers, while at the same time allowing utilities to recover and manage their costs of supply. In PECO's service territory, there will be a transition period until 2010, during which PECO is required to provide service at capped rates. Rates for energy delivery are capped through 2006. This transition period provides significant protection for all retail customers while the market matures.

Wholesale electric markets in Pennsylvania and neighboring states, and the institutions that manage those markets, are the most mature in the country. PECO's transmission system is controlled by an independent system operator (which hopes to be

approved by FERC as an RTO) and a power pool known as the Pennsylvania-New Jersey-Maryland Interconnection ("PJM"). The PJM is the most mature, liquid, and efficient wholesale electricity market in the country. To date, these institutions have demonstrated sufficient flexibility to avoid price spikes such as those experienced in California. In large part, this success has resulted from the fact that PJM provides a reasonable and stable energy environment for companies to make investment decisions about generation and because PJM operates a wholesale market in which power sales can occur efficiently.

C. Overview of Illinois Market

When Illinois restructured its electric industry, it was cognizant of the risks that both utilities and consumers faced. Instead of the radical approach taken by California, Illinois adopted a phased-in plan that protected consumers, allowed utilities to manage their costs, and encouraged the development of new generation. The Illinois Electric Service Customer Choice and Rate Relief Law of 1997 (the "Illinois Competition Act") took effect in December 1997. It allows all retail customers to purchase delivery services from their utility and to choose their electric supplier on a schedule phased in over three years. The largest customers were eligible for such choice in the fall of 1999, and all non-residential customers are now eligible. Recognizing that the benefits of supplier choice accrue first to large customers, which competitors are more eager to supply, the legislature deferred residential customer choice until May 2002. In exchange, the law provided for an automatic 15% rate cut for residential customers in ComEd's service territory in 1998, to be followed by another 5% later in 2001. Customers were shielded from the volatility of market prices for electricity because ComEd is required to continue offering bundled retail service at cost-based rates until a fully competitive market develops. The Illinois Competition Act includes a transition period to allow markets to develop.

As of March 27, 2001, over 12,000 customers in ComEd's service territory have chosen to take unbundled service. This amounts to 4,500 MW of load[1] and 17.8 million MWh of electric service. This constitutes nearly 30% of the sales that were eligible for unbundled service under the law. Presumably as a result of competition, new generation plants are emerging in Illinois. As described below, lack of development of generation facilities has been a linchpin of the California crisis.

D. The California Contrast

Both Pennsylvania and Illinois have avoided the market structure flaw that has resulted in the bankruptcy of one of the two principal California utilities, Pacific Gas & Electric. While ComEd and PECO retain fixed price obligations to retail customers, they have tools to manage their electricity costs, including the ability to enter into long-term power purchase agreements and the ability to hedge their exposures on the wholesale market.

[1] A megawatt is about equivalent to the power needed to serve 1,000 homes.

In a restructured market, it is essential to encourage development of new generation by independent producers that is adequate to meet growth in demand. California's record on building generation of any type has been poor, and analysts agree that this is a root cause of California's problems. Less than 1,000 MW of new generation have been built in the entire state of California in the last five years.[2] Far from reducing California's dependence on imports, construction has failed to keep pace with demand during a period of significant growth in the California economy. For example, between 1996 and 1999, 672 MW of new generation came on line in California, and during the same period the peak demand increased by over 5,500 MW. The bedrock lesson of the California crisis is that states must recognize the need to encourage new power plant construction. States must avoid imposing unduly restrictive regulations and lengthy and labyrinthine permitting and siting procedures, and must be ready to site not only gas-fired peakers, but new baseload capacity as well.

In Pennsylvania, PJM has been successful in encouraging adequate development of new capacity. Currently, 46,000 MW of new generation projects have applied to be interconnected to the PJM transmission system. Of that amount, 17,000 are in a stage that gives confidence they will come into service by 2004 – 4,200 MW are already under construction, construction is about to begin on another 9,100 MW, and 3,700 MW consist of upgrades to generation stations that are already operating.

In Illinois, since passage of the Competition Act, 6600 MW of new generation capacity has been built.[3] In ComEd's service territory, 2,000 MW of new capacity have already come on line. This year over 3,600 MW more is expected to come on line, all of which is permitted and is currently under construction. In 2002 another 7,500 MW are scheduled to come on line of which 3,600 MW are currently in a definitive stage.

The capacity increases in both Pennsylvania and Illinois have come on top of a large base of reliable generation using diverse fuel sources. ComEd has at its disposal a number of large nuclear and coal units for its baseload generation. Exelon owns the largest nuclear fleet in the country and in recent years the generating stations have been performing extremely well. California has not only experienced great difficulty in expanding its generation to match growth in demand, but is far more dependent on natural gas and imports from other markets. By way of illustration, in 1999, just over 16% of California's power was generated by nuclear plants[4], while nuclear generation accounted for approximately 50% of the electricity generated in Illinois.[5] Although ComEd also can turn to extensive natural gas fired resources during peak hours, for the 12 months ending last September, only about 1% of the electricity sold[6] was provided by natural gas-fired

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[2] Report of the CaPUC and California Electricity Oversight Board to Gov. Davis, August 2, 2000, p. 36 (available on the Web at http://www.cpuc.ca.gov/word_pdf/REPORT/report.doc).

[3] ComEd Pledges Enough Power, Crain's Chicago Business, April 9, 2001.

[4] 1999 California Net System Power Calculation (California Energy Commission) (available on the Web at http://www.energy.ca.gov/electricity/system_power.html).

[5] Electric Power Annual 1999, Vol. I, App. A, Tables 7, 11 (U.S. Energy Information Administration, Aug. 2000) (available on the Web at http://www.eia.doe.gov/cneaf/electricity/epav1/ta7pl.html and ...tal1p1.html).

[6] ComEd "Environmental Disclosure Statement" for the 12 months ending 9/30/00 (filed with the Illinois Commerce Commission and available on the Web at http://www.icc.state.il.us/icc/ec/edis/010101comed.pdf).

generation. In Illinois as a whole, natural gas was responsible for less than 3% of power generated in 1999,[7] whereas it was responsible for 31% of electricity consumed in California.[8] Pennsylvania, like Illinois, has substantial nuclear generation and is less reliant on natural gas. In 1999, nuclear power accounted for 36.5%, and natural gas accounted for only 2%, of Pennsylvania's electricity.[9] A diversity of fuel sources helps insulate utilities from the extreme price volatility experienced in any one commodity's prices.

In California, the utilities were required to divest all non-nuclear and non-hydroelectric generation, and to sell their remaining generation into a daily central spot market from which they were required to buy all the power they needed to serve their customers every day. The utilities' ability to hedge their exposure in that market was severely restricted. The restriction on hedging was compounded by the utilities' sale of the their generating assets. California utilities sold much of their own generating capacity and retained obligations to serve retail customers at fixed prices, while at the same time being unable to enter into long-term power purchase agreements with the buyers - the type of contracts that California officials are now turning to in an attempt to address their problems. When the problems with this became apparent, California had artificial rate caps imposed, which further blurred price signals to generators. The situation was exacerbated by fixed retail prices, because consumers receive no price signal.

In contrast, Pennsylvania and Illinois utilities are able to use market tools to manage their supply risks. Pennsylvania and Illinois utilities are free to hedge their exposure to wholesale market risk through power purchase agreements and other market tools to control future price risks. They have also been able to divest generation where it is economically rational to do so, while entering into long-term purchase arrangements with the new owners of the plants as well as other generators. Exelon provides an example of how this policy can successfully be implemented. Exelon believes that all generation in a competitive market should be on the same unregulated footing. In addition, all generation in a control area should not be in the hands of a single owner. Consistent with this philosophy, ComEd sold all its fossil generation to non-affiliated parties. This year, both PECO and ComEd transferred their nuclear generation to an affiliated generating company, ExGen. In all cases, however, the utilities entered into long-term power purchase agreements that assure an adequate supply of power at reasonable prices. In short, Pennsylvania and Illinois have chosen to keep their utilities as active players in the power markets, rather than to drive them out.

In sum, restructuring has not been the cause of California's problems. Policy choices have, however, contributed to the crisis. We must avoid making similar policy choices, just as we must continue to move toward efficient competitive markets in electric power. Both Pennsylvania and Illinois show that this can be accomplished, to the benefit of all.

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[7] Electric Power Annual 1999, *supra,* Tables 7, 10, 11.
[8] 1999 California Net System Power Calculation, *supra.*
[9] Electric Power Annual 1999, *supra,* Tables 7, 10, 11.

II. Responses to FTC Questions:

The following sets forth the responses of Exelon to questions posed by the Federal Trade Commission ("FTC") in the Notice Requesting Comments on Retail Electricity Competition Plans that was published in the Federal Register on March 6, 2001. For ease of reference, Exelon repeats the FTC's published questions.

A. History and Overview

1. Why did the state implement retail electricity competition? What problems of the previous regulatory regime was it trying to solve?

In Pennsylvania and Illinois, the state legislatures each adopted comprehensive restructuring legislation that provided for an orderly transition from fully regulated electric service because, in certain instances, competitive market forces were viewed as more effective than economic regulation at controlling the cost of electricity. The legislation was intended to ensure that consumers had an opportunity to reap the benefits associated with the budding competitive generation market, while ensuring the continued provision of safe, reliable, affordable and environmentally safe electric service.

2. What were the expected benefits of retail competition? Were price reductions expected in absolute terms or in relation to what price levels would be absent retail competition? Were the benefits of retail competition expected to be available to consumers in urban, suburban, and rural areas? Were the benefits expected to be available for residential, commercial, and industrial customers? Were the benefits expected to be comparable for each group of customers?

In both Illinois and Pennsylvania, competition was expected primarily to deliver consumer benefits in the form of prices that are lower than they would be otherwise and, ultimately, better product differentiation and product development. These benefits were expected to develop through a robust market with multiple market participants, each of which would be economically motivated to provide benefits to consumers. Generally, Exelon believes that the stakeholders anticipated that it may take some time before market forces alone would deliver price reductions. However, immediate price reductions were an important benefit of a competition program. As a result, regulated rate discounts and caps were implemented simultaneously with the start of competition. This had the dual, and sometimes conflicting, effect of delivering benefits to customers immediately, but slowing the development of a robust competitive marketplace.

In Pennsylvania and Illinois, the benefits of competition were expected to be available in all geographic areas and across all customer classes by the end of the respective transition periods. In both states, advocates for all customer classes were active participants in the development of retail competition and obtained a variety of benefits for the diverse classes. All participants recognized that different customer classes and subgroups would have very different opportunities to access competition, due to such factors as load amount, load profile, margin, flexibility to alter usage, ability to

aggregate, and past regulatory treatment of that customer group's costs. Thus, while access to the benefits of competition must be meaningful for all customer classes, different products and opportunities would develop for different types of customers.

3. What factors or measures should the Commission examine in viewing the success of a state's retail electricity competition program? How should these measures be evaluated?

Competition should deliver the benefits of choice to customers. Benefits include, but are certainly not limited to, prices which are lower than they would be otherwise, new product development, and product differentiation. Some of the benefits will occur in the short run, but others may not appear for a number of years when the market matures.

A competitive market is about customers having choices. When determining whether choice has been successfully implemented, it is important to remember that the existence of choice is a benefit and whether or how a customer exercises that choice, e.g., to select a "green" product, or to stay with the incumbent utility, etc., is less important. Among the most decisive measures of the success of a retail competition program is whether barriers to customer choice have been, or will be, equitably and effectively eliminated.

There are three primary barriers to the success of customer choice. They are: 1) restrictions on the number of customers that are eligible to chose; 2) limitations on the number of competitive suppliers; and 3) limitations on the number of customers in neighboring states that have been given choice.

The greater the base of customers with choice, the greater the opportunity for the benefits of competition to be realized. Suppliers will be able to lower their costs by being able to spread their fixed costs over a greater number of units, and by being able to make more efficient use of wholesale supply through greater volume purchases. The greater volume of customers will entice new suppliers to enter the market. New suppliers bring new products and services, and force existing suppliers to innovate to retain customers. This is not to say, however, that all customers must be eligible for choice at the beginning of the implementation process. Instead, the benefits associated with a greater customer base must be balanced so that, where appropriate, a phased approach can be used to allow customers, potential competitors and incumbent utilities to establish the systems and procedures necessary to successfully implement choice.

New suppliers must be able to enter the market without substantial regulatory roadblocks. The regulator must balance its interest in ensuring the competency of a supplier against the consumer interest in lower prices resulting from an increase in competitive choices. New suppliers should also be encouraged, through appropriately limited regulatory oversight, to site and build sufficient generation to serve customer load.

Lastly, one should consider the extent to which customers in surrounding states have comparable choice. So long as Pennsylvania and Illinois remain competitive islands,

customers in these states will be unable to obtain the full benefits of competition. Suppliers need volume in order to obtain the cost savings associated with economies of scale and scope.

Implementing legislation and regulations should remove barriers to competition and must allow sufficient time for markets to develop naturally. Temptation to artificially over-stimulate the market through increased regulation should be avoided because it will ultimately hinder the development of efficient, truly competitive markets.

4. What are the most successful and least successful elements in the state's retail competition program? Has the state taken steps to modify the least successful elements?

Pennsylvania and Illinois have each passed comprehensive legislation intended to restructure the electric markets. In neither case did the state provide for pure, open competition. Instead, each passed legislation intended to secure for consumers some of the benefits of competition while continuing to provide much of the security of regulation.

The Illinois Competition Act allowed for customer choice in the procurement of electric power and energy while still providing a highly regulated industry to carry out many of the historical functions of an electric utility. Although the Illinois Competition Act has been largely successful, it does have some less successful elements, highlights of which follow. The successful attributes include the following:

a) Retail choice is being implemented in a phased-in approach over a sufficiently lengthy transition period. This thoughtful "walk before you run" approach to retail choice has served Illinois well. The transition period began in 1997 and ends December 31, 2006. During this period, customer choice is implemented in various stages. In general, the larger industrial and commercial customers were allowed choice early in the process with residential customers receiving choice in the year 2002. Customers are given choice in accord with the following schedule:

- *October 1, 1999* — *All customers using more than four megawatts and nonresidential customers consuming one third of the remaining nonresidential sales, selected through a lottery process.*
- *June 1, 2000* — *All remaining industrial customers*
- *October 1, 2000* — *Certain governmental customers*
- *December 31, 2000* — *All remaining nonresidential customers*
- *May 1, 2002* — *All residential customers*

The market participants, with the assistance of the Illinois Commerce Commission (the "ICC"), have used the transition period to develop systems and processes to facilitate customer choice in an orderly fashion. Developing the systems is no easy task and it takes time. The phase-in approach has also allowed ComEd, other energy suppliers and independent power producers to gain real experience in the marketplace and to adapt to those developments on a manageable scale. The transition period is a time for lessons learned to be absorbed; the market must be allowed to learn and define itself over time.

b) *Customers are achieving savings. ComEd's residential customers are well on their way to receiving in total a 20% rate reduction in their base rates over a period of years. This rate reduction is likely the largest guaranteed rate reduction for residential customers among the restructured states. Nonresidential customers are also achieving savings as demonstrated by the fact that approximately 30% of nonresidential sales (based upon kilowatt hours) have opted for open access. Additional detail pertaining to the status of restructuring in ComEd's service territory can be found in ComEd's Third Annual Report to the Illinois Commerce Commission under Section 16-130 of the Illinois Public Utilities Act ("ComEd's Competition Report to the ICC"). A copy of that report is submitted herewith as Exhibit "A".*

c) *The Illinois Competition Act included various provisions that enable the utilities to adjust to the new restructured environment. The law allows traditional utilities to manage their business affairs in a more flexible regulatory climate by providing for such items as securization, depreciation rate changes, the sale of generation assets, and restructuring approval. These changes provide utilities with the ability to manage their costs more effectively. Without such flexibility, an unhealthy utility industry would result and thereby hamper customer choice.*

There are two less successful elements resulting from the Illinois Competition Act, the "PPO", described in the next paragraph and stranded costs, discussed at the end of this response. Exelon respectfully submits that it does not advocate a change to the Act due to these issues. Exelon raises the following point in the interest of providing a complete response to the question posed by the FTC. Exelon also submits that the following demonstrates that no restructuring program is flawless.

An option available to Illinois nonresidential customers known as the Power Purchase Option ("PPO") has been useful to jumpstart customer switching from traditional bundled rates, but has also served to slow participation in wholesale markets by alternative suppliers. In general, the PPO is an unbundled market-based electric power and energy offering by the utility that must be available to nonresidential customers in certain situations. The PPO has often become the preferred means by which customers (and suppliers) obtain unbundled power and energy. Under this circumstance, the utility must generate or purchase the power and then supply the same to customers, directly or via assignment at a regulated price. This has resulted in keeping a large portion of the "competitive" retail market supply price-regulated. Alternative retail electric suppliers

have been less inclined to schedule and procure a number of supply options which has resulted in an over-reliance on the utility as the source of electricity for consumers.

The Pennsylvania Competition Act also has both successful and unsuccessful attributes. The successful attributes include:

a) *Competition has been fully phased-in across the state, with all industrial, commercial and residential customers now having access to alternative suppliers.*

b) *Customers are achieving savings. According to the Pennsylvania Public Utility Commission's (the "Pennsylvania PUC") estimates, the Pennsylvania Competition Act has resulted in more than $2 billion in statewide customer benefits.*

c) *Reliability has been maintained.*

d) *Incumbent utilities were given fair treatment in recovery of stranded costs and securitization of those costs. In addition, utilities have been allowed sufficient operational and restructuring flexibility to pursue various business strategies. For example, while Exelon has chosen to keep a robust portfolio of generation assets, other utilities have chosen to divest themselves of generation assets.*

e) *Numerous competitors were able to enter the market and convince customers to switch to their service. In fact, Pennsylvania's switching rate is the highest in the nation.*

There are several less successful elements of the Pennsylvania Competition Act, which include:

a) *Pennsylvania uses rate caps to provide customers with cost savings and price spike protection. In recent months, wholesale prices for electricity have exceeded the rate caps. This has resulted in losses for competitive market participants, and some of the less well-capitalized competitors have been forced to leave the marketplace.*

b) *As competitors have left the marketplace, it has become clear that Pennsylvania's rules do not provide sufficient protections -- for example, in the form of performance bonds -- to protect the customers and incumbent utilities against the risks of a competitive generator's failure. This issue is currently being addressed in regulatory proceedings at the FERC and at the Pennsylvania PUC. Exelon anticipates that Pennsylvania will adopt new standards for market entry to ensure that market participants have the means to fully meet obligations that they make to customers.*

Stranded Costs. *One of the more contentious restructuring issues is stranded cost recovery. There is no consistent method for (1) calculating the amount of costs that may be stranded, or (2) recovering those costs. In Pennsylvania, for example, the amounts of strandable costs were calculated in lengthy, contested utility-specific PUC proceedings. The resulting amount was securitized by some utilities and is being recovered through a*

line-item charge. The determination was made with finality for each utility. By contrast, in Illinois, there was not a one-time determination of strandable costs. Instead, utilities are allowed to recover a portion of their otherwise strandable costs through an adder that is determined by a discounted "revenues lost" formula. The formula includes a "market value" factor which is determined, generally yearly, based upon certain, specified utility power contracts which, few dispute, fail to fully capture the actual "market value" of the relevant power. In the alternative, the market value may be determined using an alternative index-type methodology approved by the ICC. A lengthy, contentious ICC proceeding has yet to result in approval of an alternative methodology.

Each of these two diverse methods has its benefits and its faults. For example, the Pennsylvania method provides certainty while the Illinois method allows for adjustments to reflect the changing marketplace. On the other hand, the Pennsylvania method was a "speak now, or forever hold your peace" approach while the Illinois method guaranteed on-going, expensive litigation. What is perhaps most important is that diverse methodologies all but assures inequities among utilities – sometimes within a single state. This results in confusion for consumers, alternative suppliers, the financial markets and all other concerned parties. So long as different players are required to play under different rules, maximum competition cannot result.

B. Consumer Protection Issues

1. **What efforts were made to educate consumers about retail competition? How was the success of these efforts measured? Were the programs successful? Who funded these efforts? Who implemented the programs?**

Illinois. *Illinois has introduced competition in phases to various classes of customers. This allows the energy provider to focus education and integration efforts on smaller, more manageable groups. It also allows energy providers to build the internal infrastructure gradually. For example, Illinois nonresidential customers were allowed to select different energy providers in four phases over a 15-month period. Residential customers will first have the ability to select from different suppliers beginning May 1, 2002.*

In Illinois, the legislation placed responsibility for consumer education for residential and small commercial customers with the ICC, which created a cross-functional working group (including utilities, other potential energy suppliers, and ICC staffers) that developed educational materials and analyzed the roles each entity ought to perform. This working group created the "Plug In Illinois" concept which is a campaign designed to educate customers and suppliers about the emerging restructured market. The group developed the "Plug In Illinois" website, accessible from the ICC website (http://www.icc.state.il.us). Additionally, the ICC prepared videotapes and "Plug In Illinois" informational packets, which all Illinois utilities sent to their commercial customers. A copy of the promotional packet is attached as Exhibit "B".

ComEd has implemented a communication and implementation plan that has apprised

consumers of their new options and has provided the infrastructure to allow a consumer to switch to a new energy provider with ease. ComEd has also implemented programs designed to encourage new energy suppliers and new sources of generation to enter the market. ComEd's team rallied around the PowerPath™ logo and established web-sites, web-based information processes and a dedicated PowerPath phone center to answer questions of both customers and suppliers. It also established a team of account representatives dedicated solely to working with alternate suppliers.

The ComEd Business Marketing and PowerPath teams also developed a comprehensive communication initiative to assist all non-residential customers. ComEd ran ads in the largest-distribution daily newspapers in its service territory that carried the "Your Power. Your Choice." theme to highlight the range of electric supply options available under the law. The communications plan followed a two-pronged approach: mass advertising to foster greater awareness of choice and direct-marketing to provide greater detail about the choices. ComEd mailed brochures to all customers eligible to make a choice and developed a web-site (http://www.comedpowerpath.com) to educate and assist consumers, potential suppliers and independent power producers.

Additionally, ComEd funded and prepared the following educational materials:

- *"Resource Connection" (a quarterly publication sent to ComEd's larger business customers) included articles about the restructured market. ComEd developed another similar publication, "Watts Current", that it mailed to its smaller business customers.*
- *Newspaper ads were published in the three largest-distribution daily newspapers in ComEd's service territory prior to the start of open access (10/1/99), and again each time a new phase of activity was planned to occur.*
- *Interviews and paid commercials were placed on local radio stations to promote open access.*
- *Marketing materials were developed and sent out to all non-residential customers, i.e., brochures, welcome kits, and answers to frequently asked questions.*
- *ComEd hosted several free training sessions on open access at the opening of the market and each time a new phase was about to occur.*

ComEd continues to provide Customer Choice information regularly in on-going communications targeting nonresidential customers, including the WattsCurrent bill insert and the Resource Connection quarterly magazine. Both publications also promote the availability of more comprehensive written materials.

Finally, ComEd and the ICC are in the process of developing a similar campaign to promote open access for residential customers. Residential customers become eligible to participate in open access on May 1, 2002.

Pennsylvania. *In Pennsylvania, the PUC and utilities engaged in a concerted communication/marketing effort at the outset of competition. PECO funded $24 million toward a consumer education effort, which included both support for statewide and local consumer education. Other Pennsylvania utilities also contributed millions of dollars to*

this effort. The PUC formed a stakeholder committee that reviewed and approved statewide and local education plans funded by this effort. In addition, the PUC had an aggressive mass media advertising campaign to raise public awareness of choice.

Other stakeholders, including the Office of Consumer Advocate, produced and distributed additional educational materials.

In addition, most market participants utilized mass media, including television, radio, print, internet, and billboards, to market their supply.

The Pennsylvania PUC took regular measurements of consumer awareness of their ability to choose new suppliers. Those measurements indicated a high level of awareness of choice. As an additional measure of success, to date, hundreds of thousands of Pennsylvania consumers have switched suppliers.

2. **Do consumers have enough information to readily make informed choices among competing suppliers? Did the state coordinate its labeling requirements about the attributes of a supplier's product, if any, with neighboring states? Is there a need for federal assistance to provide standardized supplier labeling? If so, what would be the most useful federal role?**

Within the states, there seems to be adequate coordination of the labeling requirements. However, there does not seem to be any coordination from state to state. This is the case even with regards to the basic terminology that is used: some states refer to a shopping credit, some refer to a price-to-compare, some to a price-to-beat, some to standard offer service, etc. Similarly, the information that is presented to the consumers varies from state to state: some states require a breakdown of the rates charged according to one set of parameters (e.g. for consumers using 500 kilowatt hours ("kWh") per month, 1000 kWh and 1500 kWh) while others may use another set (500kWh per month, 750kWh, 1250kWh). Generation supply mix labeling also varies: some states do not require any labeling, some require graphs to show how much supply is coal-fired, gas-fired, nuclear, etc.; while others require tables; some require that air emissions be described in pounds, others in emission rates. In some states, information must be presented by marketers but not by the utilities. The need to address different state requirements makes it cumbersome for an energy supplier doing business in several states and makes it difficult for the consumer to shop. It would be useful for the federal government to advocate simple and basic information display guidelines and regional cooperation. Also, the customer should be allowed to waive the need to receive the labeling information on a periodic basis, although any new customers should, of course, receive that information.

In Pennsylvania and Illinois, consumers have access to a rich set of information on price differentials between suppliers. Less information has been available on product differentiation, with only a few suppliers marketing labeled products, almost exclusively environmental products. Oversight of those state labeling efforts has been performed by each state's Attorney General.

3. **Have consumers complained about unauthorized switching of their accounts to alternative suppliers ("slamming") or the placement of unauthorized charges on their electric bills ("cramming")? Were rules adopted to prevent these practices? Has the state taken enforcement action under its new authority against slamming and cramming? Have these actions been effective to curb the alleged abuses? Is there a need for federal assistance with slamming and cramming issues? If so, what would be the most useful federal role?**

Illinois. *The Illinois legislation contains specific provisions addressing both slamming and cramming. ComEd, in conjunction with the ICC and other interested parties, has created a very strict procedure that must be followed prior to implementing a customer switch. To date, slamming has not been a pervasive problem. Although residential customers are not yet eligible for open access, Exelon is hopeful that the switching process will alleviate many of the slamming problems experienced in other jurisdictions*

Pennsylvania. *In Pennsylvania, there have been some complaints about slamming, but the practice does not appear to have been widespread, with most incidents apparently being the result of mistake by suppliers rather than intent. There have been some complaints of misrepresentation, in which supplier representatives failed to make clear who they represented and whether "signing up" would result in switching. These practices were actively policed by the Attorney General and have not been widespread. Product differentiation has not yet developed to the point where cramming has been an issue. The Pennsylvania experience suggests that this issue is controllable at the state level and that additional federal assistance is not needed.*

4. **How did the state facilitate the ability of customers to switch to a new supplier? Have these efforts been successful? Does the state allow consumers to aggregate their electricity demand? If so, has aggregation enabled consumers to benefit from retail electricity competition? If not, why not?**

Illinois. *In Illinois, ComEd has developed and implemented a number of initiatives designed to allow a customer to easily switch to a new supplier. The following are a few examples of those initiatives:*

- *Electronic transactions are required in Illinois which facilitate the customers' ability to switch by providing for standardized, low cost, and speedy transaction processing.*

- *Illinois permitted a phased in approach to open access, allowing all market participants to develop processes and learn with a small group of customers.*

    - *Lottery conducted in July 1999 for one-third of each utility's commercial and industrial load by class*

    - *Div. D Manufacturers (SIC code 20-39) became eligible June 1, 2000*

    - *All non-residential customers became eligible on December 31, 2000*

- *All residential customers become eligible May 1, 2002*

- *Success (as described in greater detail in ComEd's Competition Report to the ICC): 30% of all eligible kWh sales are now open access sales.*

In Illinois, in order to prevent slamming and cramming and to ensure that choice remains at the customer level, suppliers must submit switch requests on an account-level basis. This approach still allows a supplier to aggregate customers for purposes of procuring wholesale energy supply or scheduling transmission of that energy. Illinois law permits more than one supplier to provide energy to a single customer, but requires that the customer appoint one of the suppliers as the energy coordinator (so that the utility has a relationship with only one supplier).

Pennsylvania. *Pennsylvania used a wide variety of methods to facilitate the ability of customers to switch to a new supplier. First, the Pennsylvania Competition Act made it clear that all customers had the right to switch suppliers and to aggregate load for that purpose.*

Second, the Pennsylvania PUC implemented "shopping credits" that were sufficiently large, at the time of restructuring, to allow alternative generators to offer discounts below the utility standard offer. (With increasing wholesale prices, this mechanism has less usefulness in inducing switching, because the utility rates are capped and when wholesale prices exceed the cap, it is more difficult for competitors to induce customers to switch service. On the other hand, customers are protected by the rate caps against rising wholesale prices. This is one example of the manner in which the Pennsylvania Competition Act balanced the various factors necessary to achieve competition).

Third, the Pennsylvania PUC set target thresholds for customer switching. In PECO's service territory, by January 1, 2001, 35% of customers (by account, or load, depending upon rate class) had to have switched to a new supplier, or non-market means would be utilized to switch additional customers. (These switching targets were met for all customer classes by January 1, 2001, and no additional steps were required.) Similarly, a 50% switching target is set for January 1, 2003.

Fourth, the Pennsylvania PUC implemented a program to switch residential customers to a new "competitive default supplier." In PECO's case, approximately 400,000 residential customers have been switched (or will be switched later this spring) to alternative suppliers NewPower and Green Mountain.

5. **Has the state established licensing or certification requirements for new suppliers to provide electricity to customers? Why? Which licensing provisions are designed to protect consumers? How do they operate? Has the state taken enforcement action against unlicensed firms? Have these actions been effective to curb unlicensed activity? Have these requirements acted as an entry barrier for new suppliers?**

Illinois. *All non-utility electricity suppliers must be certified by the ICC. The certification provisions promote competition by ensuring that the market participants are legitimate entities with the financial and technical capabilities to serve the public. This should enhance consumer confidence in the newly restructured market.*

The certification requirements fall into three general categories: financial resources, technical competence, and managerial experience. A non-utility energy supplier, known as an Alternative Retail Electric Supplier ("ARES") seeking to serve a geographic area smaller than an existing utility service territory must demonstrate that its selection of a service territory is not based upon race, gender or income. On an ongoing basis, ARES' marketing materials must adequately disclose the prices, terms and conditions of products offered. Like public utilities, an ARES must provide customers with a quarterly statement of its fuel mix and air emissions per megawatt-hour. The ICC has general oversight jurisdiction over ARES, and it retains the authority to take disciplinary action against an ARES, including the ability to levy fines and to revoke or suspend an ARES certification.

An ARES applicant begins the process by filing an application, most of which is contained on a prescribed form. The ICC must render a decision on the application within 45 days. Once certification is granted, an ARES must annually certify that it continues to meet the applicable requirements.

Exelon does not believe that the certification process has served as a barrier to entry into the Illinois market. To date, there have been over one dozen ARES' certified in Illinois.

Illinois law provides extensive flexibility to allow an applicant to demonstrate that it should be certified. The state has established a variety of procedures designed to allow for more streamlined approval of an ARES dependent upon the market that it seeks to serve. For example, an ARES that seeks to serve only large, sophisticated manufacturing customers has more streamlined certification procedures than an ARES that seeks to serve small businesses or individual residential customers. The requirements also allow an ARES several alternative methods to demonstrate its financial wherewithal, including bonds, credit ratings, affiliation agreements, and working capital loans. Finally, the regulations allow an ARES to rely on third-party agents to satisfy the technical and managerial requirements, thereby allowing an ARES with limited resources to, in effect, pool resources with a third party. In sum, Exelon believes that the certification requirements allow any bona fide and viable entity to become a market participant.

In Illinois, Exelon is unaware of any problems with uncertified ARES.

Pennsylvania. *Pennsylvania requires that each alternative generation supplier be licensed before it can provide service to retail customers. Generally, a generation supplier must show that it is fit, willing and able to properly provide service. In addition, the supplier must provide financial assurances, including a bond or other security, to ensure the financial responsibility of the generation supplier and that it will continue to supply electricity in accordance with its contracts and arrangements with customers.*

These certification provisions have not acted as an entry barrier in Pennsylvania, with dozens of entities receiving licenses to provide service. Indeed, it has recently become evident in Pennsylvania that the certification provisions may need to have increased stringency. Two market participants recently left the market without making provisions to meet their full arrangements with customers, and it has become apparent that the bonds posted by them will not be sufficient to cover the damage to customers and the incumbent utility caused by those actions.

In Pennsylvania, Exelon is unaware of any problems with unlicensed suppliers.

6. Did the state place any restrictions on the ability of a utility's unregulated affiliate(s) to use a similar name and/or logo as its parent utility, in order to avoid consumer confusion when the affiliate offered unregulated generation services? Why or why not? What has been the experience to date with the use of these restrictions? Are consumers knowledgeable about who their suppliers are?

Illinois. *In Illinois, the ICC expressly declined to place restrictions on the ability of a utility's unregulated affiliate to use a similar name or logo as its parent utility. See 83 Ill. Admin. Code § 450.25; See generally ICC Dkt. No. 98-0013/98-0035 (Cons.). The ICC adopted a rule that prohibits an electric utility from jointly advertising or marketing its services or products with those of an affiliated company that is an ARES, but specifically allows the affiliated company to use the corporate name or logo of the electric utility or electric utility holding company.*

The ICC adopted this position on the sharing of a common name or logo precisely to avoid customer confusion, stating that "it would be doing a tremendous disservice to consumers by essentially requiring affiliated interests in competition with ARES to masquerade as non-affiliated entities, when they are in fact affiliated." I.C.C. Dkt. No. 98-0013/98-0035 (Cons.), Order at 10 (Sept. 14, 1998). The evidence before the ICC included evidence which showed that the use of one name was common among energy companies, as well as customer surveys which showed that consumers in Illinois wanted to be aware of affiliate relationships. The evidence also showed that prohibiting such branding would deprive the utility of the ability to communicate with its customers and would deprive customers of their right to know with whom they were dealing. Further, the evidence demonstrated that such branding would give consumers a means of identifying and evaluating the reputation of an affiliate based, in part, on the utility's past performance and thus would allow consumers to make informed, unbiased decisions. Finally, the ICC recognized that under Illinois law, a utility's name and logo are intangible shareholder, not ratepayer, assets.

This evidence suggests that customers are knowledgeable about the identity of their suppliers. The evidence of substantial customer switching in the relatively short period of time customers have been eligible for open access shows that customers in Illinois are well aware of their options.

Pennsylvania. *PECO's affiliates are allowed to use the PECO name or logo in*

marketing, but if they do so they are required to include disclaimers that state that (1) they are a different company than PECO, (2) their prices are not regulated by the Pennsylvania PUC, and (3) that the customer can receive the same quality service from PECO regardless of whether it purchases supply from the affiliate. This disclaimer is required for written or mass media communications. These restrictions were primarily imposed to avoid marketing techniques that might unfairly imply that reliable utility distribution service was dependent upon a choice of supplier. Exelon is not aware of any controversies that developed about these disclaimers.

7. **Did the state place any restrictions on third-party or affiliate use of a utility's customer information (e.g., customer usage statistics, financial information, etc.)? What were the reasons for enacting the restrictions? What has been the effect of these restrictions on new marketing activity?**

Illinois. *In Illinois, there are two statutory provisions and one administrative rule that place restrictions on third-party or affiliate use of customer information. First, the Illinois Competition Act requires electric utilities to make both specific and generic customer information available to customers (and their agents) and to ARES. Utilities must provide a retail customer or the customer's authorized agent with the customer's billing and usage data. Thus, an ARES, so long as authorized by the customer, may obtain customer-specific billing, usage or load shape data upon request and payment of a minimal fee. In addition, generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification is available to an ARES upon request and payment of a fee. The purpose behind these provisions was to recognize, and to balance, customers' legitimate concerns with uses that might be made of information pertaining to them and their services with ARES' need for certain information useful for marketing and planning purposes.*

Second, the Illinois Consumer Fraud and Deceptive Business Practices Act provides that all personal information of a subscriber of generation, transmission, distribution, metering or billing of electric service must "be maintained by the service providers solely for the purpose of generating the bill for such services, and shall not be divulged to any other persons with the exception of credit bureaus, collection agencies, and persons licensed to market electric services in the State of Illinois, without the written consent of the subscriber." 815 ILCS 505/2HH. This section also provides protection to consumers against unauthorized use of personal information.

Third, in 1998, the ICC promulgated rules governing the relationship between an electric utility and its affiliates, including rules which implemented the requirements with respect to sharing of customer information. The ICC's rules provide that customer information must be made available without preference to affiliated interests. In addition, the ICC rules provide that an unaffiliated ARES can submit to the utility "a written standing request for any generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification" that the utility provides to its affiliated interests that compete with the ARES. The utility must provide the ARES with this information in the same form and at the same time that it provides this information to its affiliated interests.

Finally, as stated above in response to Question 6, the effect of the Illinois Competition Act and subsequent rulemakings on competition has been positive. Customers who have been eligible for choice are actively engaged in the open access process (See ComEd's Competition Report to the ICC at 1) and alternate suppliers continue to join the marketplace (id. at 2).

***Pennsylvania**. In Pennsylvania, customer-specific information has traditionally been protected from release to third parties unless the customer consents to such release. That protection has continued under competition through statewide generic Competitive Safeguards. In addition, under the Competitive Safeguards, if a utility has customer information (including all information related to the customer's identity and usage patterns) that is not in the public domain, it may not release that information to its affiliate unless it simultaneously makes that information available to all generation suppliers. It is unclear whether these constraints have resulted in a decrease in marketing by any market participant.*

8. Has the state adopted any other measures intended to protect consumers (e.g., length of consumer contracts, automatic renewal provisions, etc.) as it implemented retail competition? What has been the effect of these measures?

***Illinois**. The provisions have effectively protected customers against generation price volatility, because as market prices have recently risen, customers have had a safe harbor with incumbent utilities. On the other side of the coin, the existence of the rate caps has made it more difficult for competitive suppliers to induce customers to remain with them, since when the market price is high customers can obtain generation for less under the rate cap. The rate caps have also had an adverse financial effect on the utilities, which either must procure generation at higher wholesale prices and resell at capped retail prices, or generate and sell at retail and thus miss the opportunity to sell at higher wholesale prices.*

***Pennsylvania**. The primary additional consumer protection was in the form of rate caps. Both regulated (wires) services and generation services (if provided by the utility in its capacity as a default supplier) are subject to rate caps. In the case of the generation caps, the caps remain in effect until a utility is no longer collecting transition (stranded investment) charges. These rate caps have the effect of extending the term of all special contracts until the end of the rate cap period.*

Set forth in Exhibit "C" is a list of additional provisions of Illinois and Pennsylvania law designed to protect consumers.

9. To what extent have suppliers engaged in advertising to sell their product(s)? Do some suppliers claim that their product is differentiated (e.g., that it has environmental benefits)? Has there been any enforcement or attempts to verify these advertising claims? Do any certification organizations, such as Green-e,

operate in the state? Are they used by (or at least available to) a substantial portion of consumers?

Illinois. *As of this date, direct mail, telemarketing and direct sales (personal visits) have been the most common marketing tools utilized by suppliers in ComEd's service territory. However, at this point, residential customers are not eligible to select an energy supplier on the open market, so marketing efforts in ComEd's service territory have been primarily focused on commercial and industrial customers. Nevertheless, some suppliers have utilized mass media through print and television ads to build brand awareness. Since the Illinois Competition Act went into effect, a market has emerged for renewable energy or green power. Exelon, through its subsidiaries, is now directly promoting the use and development of green power. Thus, it may now differentiate this product for a customer that is interested in using renewable energy which has less of an adverse impact on the environment than commodity energy.*

Green-e has not established standards for renewable energy in Illinois at this time. This may be related to the fact that open access for residential customers will not occur until May 1, 2002.

Pennsylvania. *In Pennsylvania, there has been extensive advertising by generation suppliers. The primary basis of advertising has been price differential. However, some suppliers have focused their advertising on environmental product differentiation. The Attorney General has actively reviewed these claims, both as to price and environmental aspect, and has sought remedial action from a number of suppliers. No independent certification organizations currently have an active role in the state.*

C. Retail Supply Issues

1. **What difficulties have suppliers encountered in entering the market? What conditions/incentives attract suppliers to retail markets? Have suppliers exited the market after beginning to provide retail service? If so, why?**

Illinois. *Suppliers are leaving the retail markets in Pennsylvania. While, Illinois (in particular the ComEd service territory) has not experienced the same development at this point in time, it is a distinct possibility. The crux of the problem is that the current high prices for electricity in the wholesale marketplace have left the suppliers with no value proposition to offer consumers as compared to traditional utility rates. Simply put, their offerings are often higher than the bundled rate provided by the host utility. In Illinois, ComEd has not yet experienced supplier withdrawals from the market because customer savings opportunities still do exist. It is important to note that this situation could change quickly and is difficult to predict.*

Pennsylvania. *In Pennsylvania, suppliers appear to have had no difficulty entering the marketplace. In particular, the existence of PJM, which is a mature organization in the wholesale marketplace, has made it easy for new market entrants to provide critical and complex services such as regional network transmission service, spot market or bilateral energy supply, and balancing services. The ease of entry to this market is demonstrated by the fact that customer switching numbers have been very high in Pennsylvania during*

the first four years of competition, despite the recent withdrawal of some market participants.

Similarly, in Illinois, a large number of alternative suppliers have been certified and are actively participating in the market, thereby indicating a lack of entry barriers.

2. **What are the customer acquisition costs and operational costs to service retail customers? How do acquisition and operational costs compare to profit margins for electric power generation services? Do retail margins affect entry? If so, how? Did the state harmonize the procedures suppliers use to attract and switch customers with other states' procedures, in order to reduce suppliers' costs?**

   States that include customer acquisition and administrative costs in the shopping credit (e.g. Pennsylvania, to some extent) or construct a new distribution rate that reflects a reduction in these activities (e.g. Illinois) are more capable of sustaining participation in a competitive market. States that do not reflect these costs, such as in the standard offer rate in Massachusetts, have seen very little customer switching. Consumers must be able to realize the full economic choice between obtaining generation and related services from a supplier and the provider of last resort.

   The price of the provider of last resort's retail product should also reflect the acquisition and operation cost on an ongoing basis in addition to an ability to adjust for changes in generation costs. This is particularly critical with the increasingly variable wholesale energy costs.

3. **Have customers switched to new suppliers? Why or why not? Are there greater incentives for certain customer classes (i.e., industrial, commercial, residential) than for others to switch suppliers? Why or why not? Are penalties or different rates applied to customers that switch back to the supplier of last resort? Are there other measures to determine whether customers are actively considering switching suppliers? If so, do these indicators show different patterns than the switching rate data?**

   Illinois. *In Illinois, ComEd has experienced numerous customers opting for open access (i.e., power and energy being provided outside of the traditional bundled tariff). Customers consuming approximately 30% of ComEd's nonresidential sales had opted for open access as of March 27, 2001. The Illinois switching rates compare favorably to other states. See page 5 of ComEd's Competition Report to the ICC. Exelon submits that the main reason for customer switching is the savings opportunity it presents for the consumer. Large commercial and industrial customers appear to be motivated to seek savings opportunities because of the sheer size of their energy expenditures relative to smaller nonresidential electricity users. Exelon will not comment specifically on residential markets in Illinois because that market has not yet opened.*

   Pennsylvania. *PECO has experienced the highest switching rate of any utility in the nation. As of January 1, 2001, more than 50% of its industrial load, more than 35% of*

its commercial load, and more than 35% of its residential customers, were receiving generation service from some entity other than PECO. For a discussion of rates for returning customers, see response to question no. 3 under Retail Pricing Issues.

4. Have suppliers offered new types of products and services (e.g., time of day pricing, interruptible contracts, green power, etc.) in states where retail competition has been implemented? If so, describe the products and what customer response has been.

In Illinois and Pennsylvania, electricity suppliers offer many types of products and services designed to compete with the incumbent utilities' products. Exelon's regulated utilities, ComEd and PECO, offer many creative products to their customers, many of which were developed as a result of competition legislation.

***Illinois**. For example, ComEd is an industry leader in providing a variety of interruptible and curtailable service products to customers. In addition, hourly energy pricing is available to all of ComEd's nonresidential customers. ComEd also offers time of use ("TOU") and seasonal rates for customers. Through its demand response programs, customer commitments for load reductions in ComEd's service territory totaled over 1,000 MW in the Summer of 2000.*

ComEd has also entered in to an agreement with the Environmental Resources Trust ("ERT") to offer a portfolio of renewable ennergy resources under the EcoPower SM label to Retail Electric Suppliers, municipalities, regulated utilities with "green" pricing programs, and others that purchase wholesale power. EcoPower is a service-mark of ERT – a private non-profit organization with close ties to Environmental Defense, formerly the Environmental Defense Fund – that substantiates the environmental benefits of EcoPower.

Wholesale purchasers can purchase EcoPower directly from ComEd or by purchasing renewable energy tickets generated by a ComEd EcoPower resource on the Automated Power Exchange ("APX") Midwest Green Power Market. This Exchange allows wholesale market participants to buy and sell renewable energy tickets through an Internet-based trading system. The renewable energy tickets represent the environmental attributes of that renewable resource. Currently the EcoPower portfolio consists entirely of electricity produced from landfill gas. Electricity generated from other renewable energy sources will be added in the future.

***Pennsylvania**. In Pennsylvania, competition has resulted in several new products. First, several suppliers, including Green Mountain have focused on environmental marketing, making available different generation products based on the nominal source of the generation. Exelon does not have information about Green Mountain's success rate for particular products, but Green Mountain remains an active participant in the residential marketplace. Second, PECO is now offering a voluntary interruptible rate (IR2) for large customers that allows PECO and its customers to jointly benefit from load reduction during times of high wholesale prices. Although this rate was only recently approved by the Pennsylvania PUC, PECO expects robust participation from its large*

customers for the upcoming summer peak season. The Pennsylvania PUC recently established a working group to encourage other market participants to develop interruptible products. One of Exelon's unregulated affiliates, Exelon Energy, has offered various retail demand response products in Pennsylvania, New Jersey, and Massachusetts. To date, response to those products has been limited, primarily because customers have recourse to regulated or capped rates from utilities.

5. **What are the benefits or drawbacks of the different approaches to handling the supplier of last resort obligation for customers who do not choose a new supplier (e.g., allow incumbent utility to retain the obligation to provide generation services to non-choosing customers, auction the obligation, or assign the obligation to non-utility parties). What has been consumer reaction to these approaches? Is provider of last resort service necessary?**

Provider of Last Resort ("POLR") is basically a generation service. Generally three principles should govern the provision of POLR service. First, considerable leeway should be granted the entity with the POLR responsibility to tailor the POLR generation service to reflect the circumstances of each individual state or service territory. Second, the POLR service needs to reflect the implicit cost for that service; especially the various risks associated with the service. Any POLR service that does not reflect the proper costs for that service eventually results in undesirable consequences. Third, mandatory auctions or assignments are often neither necessary nor desired because the utility can utilize its existing economies of scale to procure the POLR service in the least cost fashion. Again, care must be used to fashion the POLR service to the specifics of state or service territory.

***Illinois**. As yet, POLR service exists in Illinois only in the sense that incumbent utilities continue to offer tariffed services at frozen rates to industrial and commercial retail customers who have not yet chosen to exercise choice. Residential customers will not have that option until May 2002. The ultimate shape of POLR offerings in Illinois are not yet clear, and the ICC has requested proposals on the subject. Accordingly, comment on consumer reactions in Illinois would be premature.*

Illinois utilities currently meet this obligation through the same traditional bundled rate offerings which were available prior to customer choice. Customers switching back to these services after having exercised choice may be required to remain on these rates for a period of one to two years, reflecting the procurement risk utilities face in providing this marketplace backstop. Utilities may shed themselves of this obligation for other than residential and small commercial customers through a successful petition before the ICC which may then allow such service to be abandoned or declared competitive.

***Pennsylvania**. POLR service is not necessary for sophisticated customers like large industrials. It may well be necessary for small customers like residentials, at least for the foreseeable future. One of the alternatives listed is to "auction or assign the obligation to non-utility parties." It must be recognized that any party to whom a POLR obligation is auctioned (where would the proceeds go?) or assigned would be under a governmental obligation to serve all comers as defined in the POLR law, and would therefore have to*

be regulated and thus, to some extent, a "utility." In Pennsylvania, retail customers were assigned to competitive providers; when several of those parties abruptly abandoned service, however, the customers were returned to the utility POLR providers.

In Pennsylvania, incumbent utilities are required to be the provider of last resort as long as they are collecting stranded investment charges from customers. However, in PECO's service territory the Pennsylvania PUC recently approved the move of approximately 350,000 residential customers to alternative suppliers as their default generation provider for a period of three years. In addition, Duquesne Light Company has agreed to continue to be the provider of last resort in its service territory on Commission-approved terms, even though it has completed its collection of stranded costs.

Leaving POLR obligations with the incumbent utility presents its own set of problems. To the extent the utility is left with an open-ended obligation to serve all customers, it must own or purchase under forward contracts most of the capacity in the market, so as to assure its ability to meet its legal obligations. Doing this, however, will obviously have a negative effect on the growth of robust retail competition, because it will limit the capacity available to competitive suppliers. To avoid this trap, some limitation on the utility's POLR obligations is desirable. In general, large customers are less in need of POLR service, and the utility's obligations to them should be minimal.

D. Retail Pricing Issues

1. **How is entry affected by the price for the provider of last resort service (for customers who do not choose) or for default service (for customer whose supplier exits the market)? How does the price for the provider of last resort or default service compare to prices offered by alternative suppliers? Is the price for provider of last resort service or default service capped? If so, for how long?**

Clearly, POLR service does affect a supplier's desire to enter a specific market. As previously noted, suppliers will not enter a market if the supplier cannot provide a service offering to consumers that is desired by those consumers. That service offering often entails savings, but it can include other attributes ranging from green products to enhanced customer care functions. The POLR service is usually the point of comparison for the consumer and, therefore, often the basis for the service offering being offered by the supplier. Thus, POLR service is an important attribute of overall market development. The important pricing attribute of the POLR service is that it reflect the various costs associated with the POLR service. In such a case, the suppliers will be competing against a properly priced product and suppliers will only enter the market if they can offer a value proposition superior to the POLR service. This is as it should be. Market development that is not based upon a given suppliers' offer of an enhanced value is a useless exercise. Professor Paul Joskow of MIT has written extensively on this topic and his articles are recommended reading.

Regarding the second question, comparison of POLR service to service provided by suppliers is very difficult because it is closely tied to market conditions for power and

energy that change over time. In the case of ComEd regarding the third question, POLR service is currently provided through its existing bundled rates and those rates cannot be increased until January 1, 2005. Default service is provided under ComEd's tariff Interim Supply Service (Rider ISS), a copy of which is enclosed as Exhibit "D". PECO provides POLR service through its existing unbundled generation rates, which are subject to a rate cap until December 31, 2010.

For POLR service, it is widely recognized that a requirement to serve at long-time fixed rates at or below market is a disaster waiting to happen. Thus, price caps must be very closely examined. To understand the importance of this, one need only look to the current situation in California, in which one of the nation's largest utilities has filed for, and the other has been pushed to the brink of, bankruptcy in a matter of months. It is equally important to recognize that too low a rate for POLR service inhibits the growth of robust retail competition, because the competitive suppliers have a hard time meeting or beating the POLR price. Accordingly, POLR services must provide consumers, particularly smaller, less-sophisticated consumers, with protection from the supply and price fluctuations inherent in commodity markets, while also encouraging development of a functional, competitive market.

The question defines "default service" as service only for customers whose competitive supplier leaves the market. The price for such service should be no lower than what the question calls POLR service. An unknown number of returning customers – whether because of defaulting suppliers or customer choice – is one of the main risks of POLR obligations as the term is usually used. Thus, if the two are to be distinguished, a higher price would be justified for returning customers, to compensate the POLR for greater risk.

2. Has the state required retail rate reductions prior to the start of retail competition? What is the rationale for these reductions? How have state-mandated rate reductions prior to the start of retail competition affected retail competition?

Illinois. *Under the Illinois Competition Act, which was the result of a complex multi-faceted negotiation among numerous market stakeholders, residential customers saw as much as a 15% rate cut in August 1998, and will see as much as a 5% additional cut in October 2001. This was designed to provide immediate restructuring benefits to these consumers while delaying their ability to choose an alternate supplier to May 2002. While the impact of these reductions on retail competition is yet to be seen, at current market prices the bundled utility rate may be difficult for marketers to beat.*

Pennsylvania. *In Pennsylvania, utilities were required to provide rate reductions at the outset of retail competition. Each utilities' rate reduction was determined in its company-specific restructuring case and differs from company to company. The purpose of these reductions was to make certain that all customers, whether they were in a position to immediately access the market or not, would enjoy immediate benefits of the overall move to competition. In PECO's case, the rate reductions were "front-loaded" during the first several years of competition, and during that time period both market entry and customer*

switching were robust.

3. **Do any seasonal fluctuations in the price of wholesale generation cause some suppliers to enter the market only at certain times of the year? How have these suppliers fared?**

Illinois. *In Illinois, many of the new independent power producers have built or are building peaking facilities which are likely to run primarily in the summer peak periods when prices are anticipated to be higher than during the non-summer or off-peak periods. Retail suppliers have expressed concerns regarding seasonal fluctuations, but based on Exelon's experience in Illinois to date, it does not believe that any have limited their participation in retail sales to particular times of year. Last summer, many retail suppliers took advantage of a wholesale power offer made by ComEd at the same price as the "market value energy credit" used in calculating transition charges during that same period. Certain unique features of the Illinois Competition Act, such as a retail customer PPO, that a customer can assign to their competitive retail supplier, have also been used by alternative suppliers to maintain a competitive presence.*

Pennsylvania. *In Pennsylvania, some alternative suppliers (and customers) have attempted to take advantage of seasonal variations in price. Wholesale prices show significant seasonal variation, while utility provider of last resort rates are based on annual average pricing, so the wholesale price can be above, then below, the utility price at various times in a given year. To control such gaming, PECO and other Pennsylvania utilities have proposed and adopted various techniques that generally shift the risk of seasonality back to the alternative supplier or customer that is making the switching choice. In PECO's case, if a large (commercial/industrial) customer returns during a high cost month and then leaves during the low cost months, it must continue to pay demand charges that reflect that, under average annual rates, it did not fully pay for service during its seasonal use of the utility system. These "minimum demand charges" are contained in PECO's tariff. For residential customers, PECO has in place tariff language that would allow it to require a returning customer to remain with PECO for 12 months upon returning. To date, PECO has chosen to allow residential customers to return for shorter periods than one year, without penalty.*

4. **How has the state addressed public benefit programs (e.g., universal service requirements, low income assistance, conservation education, etc.) as it has implemented retail competition? Which of these programs are necessary as competition is introduced and why? Are public benefits available to all customers or are they restricted to customers of the supplier of last resort? How does this affect retail competition?**

Illinois and Pennsylvania have each chosen to continue regulation on each of these issues. Universal service requirements are generally addressed through the POLR and other service obligations described above. In addition, both states impose requirements for low income assistance and conservation education. These programs were "necessary" to competition in that they were required so that the legislation, as a whole, received greater support than would otherwise be the case. In Illinois, for example,

ARES, like the utilities, must distribute certain consumer education materials, publish their supply sources, and they can also participate in certain of ComEd's curtailable rate options. To that extent, they participate in conservation education. Their customers, like utility customers, will also contribute to environmental and low-income funds.

E. Market Structure Issues

1. How has the development of Regional Transmission Organizations (RTOs) affected retail competition in the state?

As of this date, there are no functioning RTOs approved by the FERC anywhere in the United States. In accordance with FERC's Order No. 2000, a number of RTOs are expected to be functioning by the end of 2001. The largest Illinois utilities, ComEd, Ameren and Illinois Power, have agreed to participate in the Alliance RTO, assuming receipt of necessary regulatory approvals. The Alliance RTO is committed to being operational by FERC's December 15, 2001 deadline.

Exelon believes that RTOs will significantly facilitate the development of vibrant retail competition. At present, an entity that wishes to serve retail customers in Illinois must obtain its power within a relatively limited geographical market, because the cumulative cost of additive transmission rates often makes it economically infeasible to import power from long distances. The Alliance RTO, which will control the transmission assets of 10 companies, will be the world's largest transmission entity. Moreover, pursuant to a recent settlement negotiated between the Alliance RTO, and the Midwest Independent System Operator, Inc. ("MISO") which is pending FERC approval, generators will be able to transmit power from any source within either Alliance or MISO to any sink within either RTO for a single, non-pancaked transmission fee.

In Pennsylvania, the existence of PJM has had a substantial positive effect on the development of competition. Not only does PJM provide easy access to services such as load balancing, but the existence of wide regional coverage under a single tariff allows competitors to access a large number of competing supply sources without payment of multiple transmission charges.

2. Did the state require the divestiture of generation assets (or impose other regulatory conditions on the use of these assets) when retail competition was introduced? To what extent was divestiture of generation assets a component of the state's handling of a utility's stranded costs? Was divestiture used to remedy a high concentration of generation assets serving the state? Was there appreciable voluntary divestiture of generation assets? Has the state examined whether there has been appreciable consolidation of ownership of generation serving the state since the start of retail competition?

Neither Illinois nor Pennsylvania expressly required the divestiture of generation assets nor imposed other regulatory conditions on the use of these assets (although the Pennsylvania PUC had the statutory right to do so if such conditions were needed to

ameliorate market power abuses). Instead, both states allowed utilities significant flexibility to restructure their businesses during the transition to greater competition. However, in Illinois, the transition charge calculation methodology includes a "mitigation" discount factor which results in utilities not being able to recover, through that charge, the full amount of costs which could otherwise be stranded. If utilities desire full recovery of costs which could otherwise be stranded, they must "find" a method to effectuate that recovery within the flexibility provided by the Illinois Competition Act. For ComEd, the only realistic means available to it to recover those costs, while contemporaneously raising the funds required for infrastructure improvements, was to sell the only assets that could then be sold at a significant profit over book: its fossil generating stations. This action resulted in dilution of what was previously a large concentration of generation serving one state. In addition, Exelon chose to restructure its businesses and to separate ComEd's and PECO's remaining generation from their respective wires businesses.

3. **If a utility no longer owns generation assets to meet its obligations as the supplier of last resort or default service provider, what market mechanism (e.g., spot market purchases, buy back or output contracts, etc.) does it use to obtain generation services to fulfill these obligations? What share of a utility's load is obtained via the different mechanisms? How are these shares trending? Is the market mechanism transparent? Is it necessary to monitor these market mechanisms? Why or why not? If so, what should the monitor examine?**

ComEd's and PECO's generation needs are generally supplied – at fixed prices --by Exelon's generation company, ExGen, pursuant to agreements approved by the states and the FERC. The generation company draws from a diverse portfolio to serve the state-regulated utilities' needs, including owned generation, long-term purchase power agreements and spot-market purchases. The portfolio changes somewhat on a daily basis and its precise constitution is highly proprietary. In addition, a small portion of ComEd's and PECO's generation needs are satisfied by power obtained from co-generators and other generators participating in tariffed programs.

4. **Explain the state's role in overseeing operation of the transmission grid in the state and the extent to which public power or municipal power transmission systems are integrated into this effort. What is the relationship between the state's role and the Federal Energy Regulatory Commission's role in transmission system operation in the state?**

The operation and reliability of a utility's transmission facilities is governed by both federal and state law. The FERC has jurisdiction over the operation of the transmission grid. The National Electric Reliability Council ("NERC"), an industry organization, oversees wholesale transmission reliability. The states have jurisdiction over the delivery of energy to retail customers within the state, and oversee the reliability of the utility's transmission facilities to the extent they are used to provide service to the utilities' retail customers. The state also has jurisdiction over the siting of transmission facilities, and thus must approve the construction of any new transmission facilities, notwithstanding that jurisdiction over the operation of such facilities lies with the FERC.

Public power and municipal electric systems are not FERC-jurisdictional. Such systems are integrated into FERC's open access transmission policy through FERC's reciprocity requirements. FERC encourages the inclusion of such non-jurisdictional systems in RTOs.

5. **Do firms that have provider of last resort or default service obligations (formerly "native"obligations in the regulated environment) receive preferential transmission treatment? If so, how does this affect wholesale electric power competition? How and by whom should retail sales of bundled transmission services (i.e., retail sales of both energy and transmission services) and retail sales of unbundled transmission be regulated? If by more than one entity, how should regulation be coordinated? What should the state's role be in overseeing wholesale transmission reliability?**

Illinois. *In Illinois, ComEd and other major entities have agreed to form the Alliance RTO later this year, which will adopt the same or similar procedures for the provision of transmission service, so that all retail energy suppliers in that area will have identical access to the regional transmission system.*

Pennsylvania. *In Pennsylvania, in the PJM control area, which includes PECO's service territory, all retail load, whether bundled service provided by the utility provider of last resort or unbundled service provided by the utility or an alternative generation supplier, is served under network transmission service supplied under the PJM tariff. All retail energy suppliers have identical access to the regional transmission system to serve their retail loads.*

The FERC currently has exclusive jurisdiction over the provision of unbundled transmission services, but states continue to set retail rates which include the cost of transmission service. Exelon believes that the FERC has shown strong leadership in moving the wholesale marketplace to effective competition, and that it should remain the sole regulator for transmission service. To the extent that the FERC continues to allow some states to partially regulate bundled transmission service, such can result in bundled and unbundled market participants not facing the same price signals for the cost of transmission service.

6. **To what extent did the state identify transmission constraints affecting access to out-of-state or in-state generation prior to the start of retail competition? Is the state capable of remedying these transmission constraints, or is federal jurisdiction necessary? How do the rationales for federal jurisdiction over electric power transmission siting compare to the reasons underlying federal jurisdiction over the siting of natural gas pipelines?**

Although both the Pennsylvania and Illinois regulators were aware of transmission constraints prior to the advent of competition, neither state undertook a study of those constraints as part of its move to competition. Under the Illinois Public

Utilities Act, the state has the authority to order utilities to construct transmission facilities; such an order is a prerequisite to a utility's exercise of its condemnation authority. The FERC also has authority to order construction of transmission facilities, and, in fact, the Open Access Transmission Tariff promulgated with FERC Order No. 888 requires transmission providers to construct transmission facilities when such facilities would be necessitated by requests for firm transmission service. The problem with such a federal mandate is that the FERC has no authority to approve siting of new transmission facilities, which is exclusively a matter of state jurisdiction. The rationale for federal jurisdiction over transmission siting is probably no less valid in the electric industry than in the gas industry. The introduction of open access transmission and competition at the wholesale and retail levels have made power markets ever more regional in scope, and this may well argue for a federal role in transmission siting.

7. **How have state siting regulations for new generation and transmission facilities been affected by the onset of retail competition? Has new generation siting kept pace with demand growth in the state? If not, why not? Is federal jurisdiction necessary for siting of electric power generation facilities? Has the state actively monitored and reported the relationship between in-state capacity and peak demand in the state? What incentives do suppliers have to maintain adequate reserve capacity? What are the ways to value capacity in competitive markets? Is reserve sharing still important in competitive markets? Do other institutions/market processes provide a reasonable substitute for reserve sharing?**

Illinois. *The opening of the retail market in Illinois would appear to be one of the reasons that there has been robust independent power producer ("IPP") development in Illinois in the last two years. To date, however, it is not apparent that Illinois law regarding the siting of generation and transmission facilities has been affected by the onset of retail competition. In ComEd's area, new generation siting has kept pace with demand growth. ComEd's peak demand growth in recent years has been about 450MW/yr. In 1999-2000, about 2,000 MW of new generating capacity became operational in ComEd's service territory, and in 2001, Exelon expects over 3,600 MW of additional capacity to come on line.*

As to reserve capacity in competitive markets, Mid-America Interconnected Network ("MAIN") conducts an annual audit to assess whether suppliers have adequate reserve capacity to serve their firm load obligations. At present the Midwest does not have mandatory reserve requirements. ComEd expects markets for capacity to develop after RTOs begin operations.

The ICC has held public meetings at least annually where utilities report on capacity and their ability to meet the expected peak demand. The ICC's first public meeting for 2001 is planned for mid-April.

Pennsylvania. *In Pennsylvania, the PUC historically has not required siting approval for new generation sites (except insofar as separate "buildings" were to be constructed) and with the move to competition that has not changed. The Pennsylvania PUC does*

actively regulate the siting of transmission lines over 100kV. The PUC has generally recognized that FERCs ability to order a utility to eliminate a transmission constraint may affect state siting approvals, in that it may require a new approach to the traditional examination of the "need" for a transmission line.

New generation siting in the PJM control area appears to be keeping pace with supply. In particular, PJM is coordinating a successful program for generation interconnection, which eliminates a substantial barrier to siting generation. As a result, Exelon does not believe that federal jurisdiction over generation siting is necessary at this time. However, if local or state governments consistently deny or make burdensome access for generation siting (as in California) or allow access to only a portion of the generation supply market (as in Florida), federal intervention may be appropriate, either by requiring better local access to generation sites or by creating easier access to transmission siting.

The Pennsylvania PUC monitors regional supply/demand balance. With respect to reserve capacity and reserve sharing, PJM has a long history of a contractual Installed Capacity obligation and recognition of the benefits of reserve sharing for all load serving entities in the region.

***Federal Power Act**. Section 201 of the Federal Power Act expressly withholds from the federal government jurisdiction over generating facilities. It is not clear that this long-standing law should be overturned. To some extent, generation and transmission are interchangeable. Especially if there were federal jurisdiction over transmission siting, ensuring a coordinated regional plan for robust grid expansion, generation could be seen as more of a local matter properly committed to state jurisdiction, as it is under the Federal Power Act.*

8. Since the start of retail competition, what has been the rate of generation plant outages (scheduled and unscheduled)? To what extent has the state monitored these outages and examined their causes?

Exelon is not aware of changes in outage patterns in either Pennsylvania or Illinois since the start of retail competition. In both Illinois and Pennsylvania, one purpose of the restructuring laws was to eliminate state regulatory oversight of generation, and the state regulatory agencies thus do not generally monitor generation functions such as outages for general oversight purposes. The Pennsylvania PUC, however, does have retained jurisdiction to investigate potential anticompetitive behavior and could monitor generation outages if necessary to ameleriote anticompetitive behavior.

F. Other Issues

1. What measures has the state taken to make customer demand responsive to changes in available supply? Has the state provided utilities incentives to make customers more price responsive? Has the state moved away from average cost

pricing? What effect have these measures had on demand and on demand elasticity?

Illinois. *The ICC has approved time of use ("TOU") and seasonal rates for ComEd since the late 1970's, and currently all ComEd customers of 500kw or greater receive service under TOU rates. All rates for all customers are generally seasonally differentiated. The Competition Act also mandates that all electric utilities offer real time pricing rates to all customers at least one year prior to their becoming eligible for open access. ComEd has submitted remarks to the ICC on real time pricing, which are attached as Exhibit "E". In addition, the ICC has historically monitored changes in peak/off peak consumption patterns under TOU rates on an annual basis. ComEd has taken numerous and extensive actions to bring curtailable products to its customers.*

Over the last three years ComEd has used the billing and pricing experiment structure, enabled by the Illinois Competition Act, to enhance the demand response programs currently offered to customers. The billing and pricing experiments have been used to expand participation in demand response by about 500 MW since 1998. This represents over an 80% increase in price responsiveness, partly achieved by the flexibility created by the use of experiments on an annual basis. Customer commitments for load reductions in ComEd's service territory totaled over 1,000 MW in the summer of 2000.

In addition to the demand response programs, the Illinois Competition Act required the introduction of hourly energy pricing for non-residential customers (Rate HEP). ComEd's tariff for hourly energy pricing is available to all business customers and provides access to market based pricing.

Pennsylvania. *The Pennsylvania PUC recently established a working group to address this issue and develop demand management tools. PECO presented a new rate for interruptible service at a recent working group session, and intends to utilize the new rate this summer. The new interruptible rate (IR-2) allows PECO and its customers to enter into an arrangement in which PECO notifies customers that the wholesale market price has risen to an economically attractive level; if the customer then voluntarily chooses to reduce its load by designated amounts, PECO and the customer share the financial benefit of the assumed resale of that power on the wholesale marketplace. Other Pennsylvania utilities are being actively encouraged by the Pennsylvania PUC to enact similar or other demand management programs. Because these programs have only been developed in recent months, it is not yet known how effective they will be as demand management tools. However, PECO is actively promoting its new interruptible rate to its industrial customer base and anticipates significant use of the program this summer.*

Impact of Rate Caps. *Exelon notes that the existence of rate caps has had a somewhat dampening effect on some demand-side measures. Customers are less inclined to take on, and manage, demand side risk when a fixed cost rate cap alternative is available.*

2. Has the state provided mechanisms and incentives for owners of co-generation capacity to offer power during peak demand periods? Has the state identified,

reported, and facilitated development of pumped storage facilities or other approaches to arbitraging between peak and off-peak wholesale electricity prices?

In both Pennsylvania and Illinois, cogenerators are highly incentivized to operate during peak demand periods, because that is when the highest prices are available on the wholesale marketplace for their generation output. This incentive, however, is competition-driven, rather than being a mechanism provided by the state. Cogenerators that meet the definition of a "qualifying facility" ("QF") under PURPA also have access to "avoided cost" pricing, which is a mechanism established by federal law but implemented by the state. In some circumstances, avoided cost pricing contracts that were entered into in the past, when a region was short of supply, exceed the current wholesale market price and provide an additional incentive for cogenerators to operate during peak hours.

For retail customers that control cogeneration, both Illinois and Pennsylvania allow utilities to develop tariff options to incentivize use of the cogeneration at peak times. PECO's IR-2 rider, which provides an incentive for industrial customers to decrease usage at times of high price (and thus to potentially do so by use of on-site generation) is an example of such a tariff. ComEd has a number of billing and pricing experiments that allow the retail customers to operate as a generator and offset purchases that would otherwise be made from a utility. These curtailment options seek to compensate the customer based on wholesale market prices, and thus provide an incentive to decrease usage at times of peak demand.

Exelon is not aware that either Pennsylvania or Illinois is involved in facilitating the development of pumped storage.

3. **What issues have arisen under retail competition that have required cooperation or coordination with other states? What approach was taken to securing this cooperation or coordination? Are there other issues requiring cooperation that have not yet been addressed? Which of these issues are the most significant? --**

Illinois. *Many of the issues which have required cooperation center around the need for uniformity in business processes, both for retail competition and meter unbundling. To that end the Coalition for Uniform Business Rules ("CUBR") and Edison Electric Institute ("EEI"), joined by others including state regulatory representatives and consumer advocates, formed a Uniform Business Practice ("UBP") group in the fall of 1999. This group (including not only suppliers and utilities but regulators, customers and consumer groups as well) worked through all the process issues involved in retail competition. The end product was a report issued in December 2000 which identifies issues of consensus, and provides input for regulatory authorities on issues where no consensus was reached. This group truly represented all the participants in this process at the retail level. There are a few significant issues where consensus was not reached, the most contentious of these perhaps is the issue of creditworthiness. In addition, on other issues where there was not consensus, the group used the UBP document to highlight the policy issue and/or reflect the experience and the opinions of the participant*

bodies.

Pennsylvania. *One of the barriers to effectively entering and participating in the electric supply market is the need for alternate suppliers to communicate large volumes of data concerning customer switching, meter readings, billing and wholesale supply coordination with each utility in whose service territory they have customers. Pennsylvania instituted procedures (developed by a working group of utilities, suppliers, and others) to standardize both data formats and data transfer procedures for all utilities in the state. Subsequently, as other states in the PJM control area have opened to competition, there has been inter-state cooperation to expand this data format coordination. This commonality of data exchange has lowered a substantial barrier to market participation.*

4. **How prevalent is the use of distributed resources (e.g., distributed generation) within the state? What barriers do customers face to implementing distributed resources?**

   Distributed generation has made some inroads in Pennsylvania and Illinois but, is not yet a primary supply resource. Barriers to distributed generation include problems with siting (e.g., public opposition, environmental regulations, municipal land use planning), varying rules for interconnection with the transmission grid and market acceptance of cost of distributed resources as a primary rather than standby form of electric generation. The Pennsylvania PUC recently instituted a working group involving utilities and other parties to identify and implement methods of increasing the use of distributed generation in the state. In Illinois, interruptible and curtailment programs are ongoing and have met with a certain level of success.

5. **Which specific jurisdictional issues prevent state retail competition programs from being as successful as they might be?**

   Exelon believes that, where the various stakeholders have approached the development of competition with a spirit of cooperation, jurisdictional issues have not acted as an impediment to the successful implementation of competition. In addition, that same spirit of cooperation has been successful in meeting challenges that develop as competition matures, regardless of jurisdictional issues.

   In those instances where stakeholders have not had the spirit of cooperation in moving toward competition, jurisdictional issues are frequently used as one of numerous barriers to inhibit change.

6. **Which specific technological developments are likely to substantially affect retail or wholesale competition in the electric power industry that may alter the manner in which states structure retail competition plans? Why? What time frame is associated with these developments?**

   At this early stage of electric power industry competition, Exelon is not aware of specific technological developments that are likely to substantially affect competition.

7. **What are the lessons to be learned from the retail electricity competition efforts of other countries? Are there other formerly-regulated industries in the U.S. (e.g., natural gas) that allow customer choice and provide useful comparisons to retail electricity competition? If so, what are the relevant insights or lessons to be learned?**

Exelon has no additional comments in response to these questions at this time.

Respectfully submitted,

Exelon Corporation

April 11, 2001

EXHIBIT A
Section 16-130 Report

Third Annual Report To The Illinois Commerce Commission Under Section 16-130 of The Illinois Public Utilities Act

March 1, 2001

Third Annual Report to
The Illinois Commerce Commission
Under Section 16-130 of the
Illinois Public Utilities Act

Introduction and Brief Overview of Competitive Landscape

Commonwealth Edison Company ("ComEd" or the "Company") herein files its third annual report to the Illinois Commerce Commission (the "ICC" or the "Commission") pursuant to Section 16-130 of the Public Utilities Act, which Section was created through the passage of the Illinois Customer Choice and Rate Relief Act of 1997 (the "Customer Choice Law"). Under that Section, utilities must file with the Commission an annual report on competition by March 1st of each year.

ComEd has organized this report in four sections. The first section is introductory. The second section summarizes the direct savings that ComEd customers have realized since the Customer Choice Law became effective in December 1997. In the third section, ComEd identifies the major activities and developments that occurred in 2000 and more fully describes how competition is working in ComEd's service territory. The fourth section contains the specific information required by Section 16-130.

While this is ComEd's third annual report since the Customer Choice Law was enacted, it is the Company's first opportunity to comment on the market after a full 15 months of competition. While competition is in its infancy, the data clearly indicate that customers and competitors have embraced the restructured market. The Customer Choice Law is generating its intended benefits in ComEd's service territory.

As of December 30, 2000, 15% of non-residential customers eligible to choose a new electric supplier or to elect the Power Purchase Option ("PPO") chose delivery services, representing approximately 50% of the kWhs for that group[1]. This critical development demonstrates that non-residential customers, those that have been eligible for choice, are actively engaged in the open access process.

As described in detail below, since ComEd's last report to the Commission, the number of non-residential customers in ComEd's service territory that have chosen delivery services has doubled from 5,526 (through February 8, 2000) to 11,059 (through February 23, 2001). More importantly, customers representing approximately 30% of all eligible sales (based upon usage) have elected delivery services as of February 23, 2001. Given that 275,500 of ComEd's non-residential customers (or approximately 81% of the total customers now eligible) became eligible to switch less than two months ago, these numbers are encouraging.

[1] On October 1, 1999, approximately 41,000 non-residential customers in ComEd's service territory became eligible to select delivery services. On June 1 and October 1, 2000, approximately 21,000 and 1,500 additional non-residential customers became eligible to select delivery services, respectively. On December 31, 2000, the remaining 275,500 of ComEd's non-residential customers became eligible to select delivery services. As a result of this increase in population and the relatively short time period that full access has been available to non-residential customers, those customers representing 30% of <u>all</u> eligible sales (based upon usage) had elected delivery services as of February 23, 2001.

Since ComEd's last Section 16-130 report, three additional Retail Electric Suppliers (retail electric suppliers certified by the Commission to supply energy ("ARESs") and Illinois jurisdictional utilities)(collectively, "RESs") have been approved by the Commission. Eight RESs have taken the necessary steps to supply electricity over ComEd's wires and seven are actively engaged in supplying energy to non-residential customers in ComEd's service territory.

Companies are making considerable investments in energy generation plants in ComEd's service territory. Since passage of the Customer Choice Law, an additional 2,000 MW of capacity has come on line in ComEd's service territory alone. Another 7,200 MW of capacity is in development.

These data suggest that the Customer Choice Law is having the desired effect on the market – customers are making competitive choices; new suppliers have entered the market; and companies are investing millions of dollars in new energy generating plants.

Direct Customer Savings Since the Passage of the Customer Choice Law.

In December 1997, ComEd filed a tariff eliminating its fuel adjustment clause. That action resulted in almost $43 million in direct refunds to ComEd's customers in 1998. Customers also saved an additional $32 million in 1998 fuel and energy costs that ComEd was unable to recover from customers in the absence of the fuel adjustment clause.

On August 1, 1998, residential customers saw a 15% reduction in electric service rates. For the five months of 1998 that it was in effect, that rate reduction saved ComEd's residential customers approximately $170 million. ComEd residential customers saved approximately $390 million and $395 million in 1999 and 2000, respectively, as a result of the rate decrease.

Cumulative direct savings from the elimination of the fuel adjustment clause and the residential rate reductions total approximately $1,030 million. ComEd customers will receive an additional five percent rate reduction in October, 2001. The cumulative 20% residential rate decrease is, at this time, the largest *guaranteed* restructuring rate reduction in the United States.

The Transition to Competition

The Formation of Exelon Corporation.

In October 2000, ComEd's parent corporation, Unicom Corporation ("Unicom"), merged with PECO Energy Company ("PECO") to form Exelon Corporation, one of the nation's largest electric utility companies with approximately five million customers and more than $12 billion in annual revenues. Exelon is headquartered in Chicago and is

organized into three businesses: Exelon Energy Distribution (including the transmission and distribution business of ComEd); Exelon Generation (including the Illinois nuclear fleet formerly owned by ComEd); and Exelon Enterprises.

ComEd is now an independent business unit responsible for the transmission and distribution of electricity to customers in northern Illinois. Within this new structure, ComEd will be able to focus on reliability and customer service. ComEd remains committed to its two-year, $1.9 billion reliability improvement plan. With this more intensive focus, ComEd is poised to effectively serve customers and emerging energy suppliers in Illinois. In addition, ComEd and PECO have initiated the sharing of technical information and procedures. This will surely benefit communities in northern Illinois.

The Recent California Energy Market and Competition in Other States.

Although the purpose of this report is to provide the Commission with information about the Illinois market, ComEd mentions the current energy crisis in California because this highly publicized situation has drawn attention to other restructured states such as Illinois. One of the fundamental problems in the California market is that demand exceeds supply. There are several aspects of the California restructuring approach that may have contributed to the state's energy problem. While ComEd will not attempt to address the issues in detail in this report, the following summary highlights some of the key differences between the two states.

- Unlike California, new capacity is being developed in ComEd's service territory, in part because of ComEd's proactive efforts to encourage new generation. For example, less than 1,000 MW of new generation have been built in the entire state of California in the last five years[2]. Between 1996 and 1999, peak demand in California increased by over 5,500 MW[3]. In ComEd's service territory alone, 2,000 MW of new capacity has come on line since January 1999. ComEd expects that another 3,600 MW of generation will come on line in its territory this year, all of which is permitted and is currently under construction. Another 3,600 MW of capacity is in either the construction or equipment ordering stage. The entities that have and are in the process of developing new generation are not affiliates of Exelon Corporation or ComEd.

- Illinois utilities are allowed to hedge against the volatility of future wholesale prices by, among other things, entering into long term purchase agreements with power generators. California has relied more heavily on the spot market and has impeded hedging strategies.

- Illinois has taken a more deliberate, phased approach to competition. This approach allows for a learning process and fosters market development in an

[2] Report of the CAPUC and California Electricity Oversight Board to Gov. Davis, August 2, 2000, p. 36 (available on the Web at http://www.cpuc.ca.gov/word.pdf/REPORT/report.doc)
[3] Id.

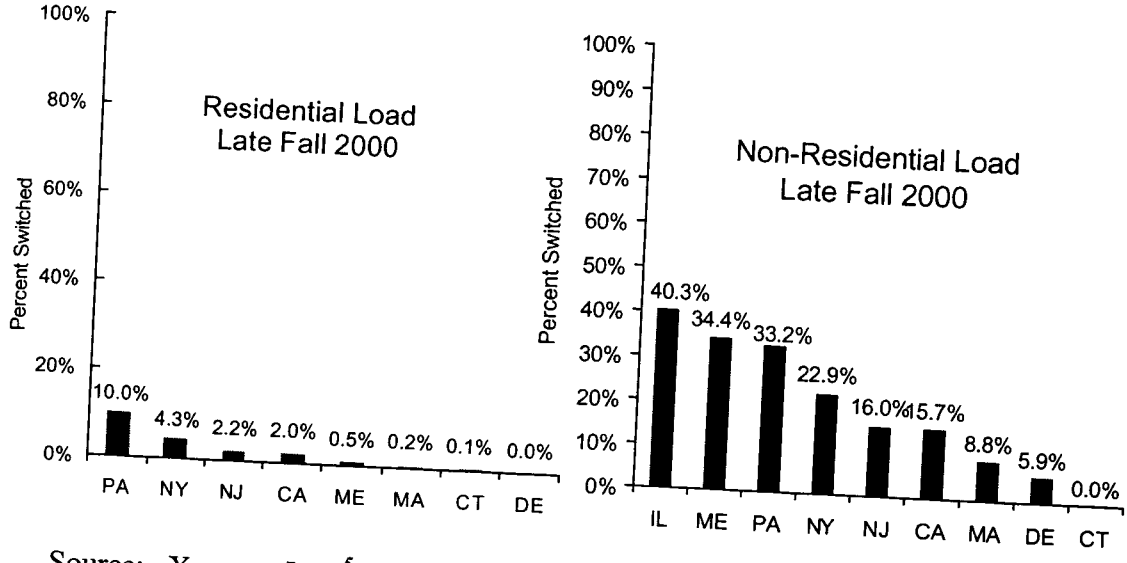
orderly fashion. California sought a very short, almost abrupt, transformation to a completely new market structure.

Chairman Mathias has thoughtfully written on this subject. See, *Can a California Energy Debacle Occur In Illinois?* Mathias, Richard L., Fall 2000 (available at the Commission's Web-site at http://www.icc.state.il.us). That report provides a more in-depth analysis of the California situation and of the factors that contribute to the greater stability of the Illinois market.

Available data distinguishes Illinois from other jurisdictions as well. According to data recently compiled by an independent market observer, eligible Illinois consumers served by ComEd and other Illinois utilities have switched to delivery services at a significantly higher rate than their counterparts in other open access states. According to Xenergy, Inc. [4], as of late Fall 2000, customers representing more than 40% of all eligible usage in Illinois had opted for delivery services. In fact, prior to December 31, 2000 (when all non-residential customers first became eligible for open access), customers representing a full 50% of ComEd's eligible load, had opted for delivery services. Because the remaining 81% of eligible customers in ComEd's service territory just recently became eligible, the overall switching rate in ComEd's service territory is, at this time, approximately 30%. As the following graph suggests, other states have experienced much lower switching rates among non-residential customers.

[4] Xenergy, Inc. is a national consulting firm that focuses on the deregulation of the energy industry.

Current Shopping Statistics



Source: Xenergy Inc. [5]

As the Commission knows, residential customers become eligible to select delivery services on May 1, 2002. The data compiled by Xenergy generally indicate that switching for residential customers has been less prevalent than for non-residential customers.

While statistics identify customers that have affirmatively opted for open access, they fail to identify customers that have evaluated their competitive options and have chosen to retain bundled service – for whatever reasons. Therefore, the percentage of customers that have actually made a "choice" under open access must necessarily be greater than the statistics indicate.

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[5] Xenergy reports that it compiled the data that are the subject of these graphs from the sources described below. The percentages indicate the percent of eligible load that was procuring power and energy competitively, and not the number of customers that made such switch.

Xenergy reports that its sources for the data are as follows: (Illinois) The Illinois Commerce Commission; (Maine) The Maine Public Utilities Commission; (Pennsylvania) The Pennsylvania Office of the Consumer Advocate; (New York) The New York State Public Service Commission; (New Jersey) The New Jersey Board of Public Utilities; (California) The California Public Utilities Commission; (Massachusetts) The Massachusetts Division of Energy Resources; and (Connecticut) The Connecticut Department of Public Utility Control. Delaware does not have statewide data available. The data presented for Delaware was provided by the Delmarva Power and Light Company, which supplies 8.263 million MWh of Delaware's 10.398 million MWh. Delaware is the only unofficial report. ComEd has not independently verified the information provided by Xenergy.

ComEd's Efforts to Effectuate the Transition to Competition.

ComEd has devoted considerable resources to ensure the efficient transition to a more fully competitive market. ComEd is a strong proponent of the alternative market index approach in the determination of the market value of energy to further facilitate market development in ComEd's service territory and throughout the state. ComEd has also implemented a communication and implementation plan that has apprised consumers of their new options and has provided the infrastructure to allow a customer to switch to a new energy provider with ease. ComEd has also implemented programs designed to encourage new energy suppliers and new sources of generation to enter the market.

The ComEd Business Marketing and the PowerPath™ teams developed a comprehensive communications initiative to support the December 31, 2000 milestone-open access to all non-residential customers. ComEd began running ads in local newspapers on December 1, 2000. All communications carried the "Your Power. Your Choice." theme to highlight the range of electric supply options available under the law. The communications plan followed a two-pronged strategy: mass advertising to foster greater awareness of choice; and direct marketing to provide greater detail about the choices. In January 2001, ComEd mailed brochures to all non-residential customers. ComEd also developed a Web-site (http://www.comedpowerpath.com) to educate and assist consumers, potential suppliers and potential generators.

ComEd has developed a number of programs to allow non-residential customers to maximize their options under the Customer Choice Law. For example, a customer may now switch to a new energy supplier at other times during the billing period, rather than only on its meter read date. Customers may also more easily split loads between ComEd and another supplier.

ComEd created the Electric Supplier Services Department and assigned an account manager to each RES that is supplying electricity to retail customers in ComEd's service territory. The account manager provides support and information as needed to each RES as it registers with ComEd and during its continued operations.

ComEd is committed to the development of competition in the electric markets; it wants competition to work. ComEd has spent approximately $63 million to develop and implement the processes and systems that allowed for the smooth transition to customer choice thus far. The Company successfully implemented its programs for non-residential open access and it has formed a dedicated team that is currently working to ensure similar success for residential open access that begins May 1, 2002.

Significant Year 2000 Competitive Developments in the Illinois Electric Service Industry.

A main objective of the Customer Choice Law is to create the environment that will allow firms to compete to supply power and energy to retail customers. At its most fundamental level, the law accomplishes that objective by requiring utilities to allow a RES to use the utilities' wires and other equipment to deliver energy to retail customers.

Accordingly, it makes some sense to look at the number of RESs that are doing business in Illinois, the number of customers and the volume of energy load used by such customers who have selected delivery services, as rough measures of progress under the Customer Choice Law. For the first 15 months of open access in Illinois, those data described below, which show that customers representing approximately 30% of the eligible load have selected delivery services, are encouraging.

But those data tell only part of the story. Vibrant retail competition depends on robust wholesale competition. In order to attract customers, RESs must find ways to add value to the supply of electricity. Part of that value proposition may come from new services, such as energy management, that may accompany the sale of energy. It may come from bundling electricity with other energy products such as natural gas, or it may, and probably will, come from hedging the risk of price fluctuation for retail customers. In order to provide those products, RESs must have access to markets in which the physical supply of electricity is traded and to highly liquid derivative markets in which they can hedge the financial risk of price volatility for customers. The wholesale infrastructure must develop in parallel with the infrastructure that supports retail competition.

Developments at the Retail Level.

Much activity has occurred in ComEd's territory during the first 15 months of open access. Unlike the experience in other states, Illinois utilities met the initial open access date without a hitch. Exhibit A to this report contains press reports and other information relating to competitive developments at the retail level.

- **Retail Electric Suppliers are Actively Engaged**. As of February 2001, the Commission had certified sixteen RESs. Of the sixteen suppliers, eight have demonstrated to ComEd that they can process a direct access service request, the document that enables the RES to switch suppliers on behalf of customers. These new suppliers are beginning to package and offer new products and services to Illinois customers. For example, NewEnergy is developing energy curtailment programs and is encouraging co-generation as an energy resource.

- **Customers are Choosing New Suppliers**. On October 1, 1999, approximately 41,000 non-residential customers in ComEd's service territory, representing approximately 31,000,000 MWhs of annual customer usage, were eligible to choose between delivery services and traditional bundled tariffed services. As of December 30, 2000, approximately 9,533 of those customers, or just over 15 % of the total eligible population and 50% of the eligible load, had elected delivery services. As of February 23, 2001, 11,059 non-residential customers, or customers representing approximately

30% of the now expanded entire non-residential load in ComEd's service territory, had elected delivery services.

Developments at the Wholesale Level.

Retail competition depends crucially on a sound wholesale market infrastructure. The wholesale infrastructure, like competition at the retail level, is beginning to emerge. Exhibit B to this report contains press reports and other information relating to recent developments at the wholesale level.

- **New Generation Sources are Emerging**. The prospect of competition for the supply of power and energy to retail customers has sparked interest by independent power producers ("IPPs") to develop and build new generation in Illinois. By the end of 2000, IPPs had installed over 2,000 MW of capacity on line in ComEd's service territory alone. ComEd anticipates that six additional facilities with more than 3,600 MW of capacity will be on line in its service territory by the end of 2001. Another 3,600 MW of capacity is in either the construction or equipment acquisition stage. As of February 23, 2001, ComEd has received applications for 50 additional IPP projects in ComEd's transmission territory. These facilities are in various stages of study, design and permitting.

- **ComEd Is Actively Supporting New Generation Sources**. In June 1998, ComEd identified and described the fourteen generation sites that would have the most beneficial effect on reliability in Illinois. ComEd has begun to implement plans to invest $30 million to help IPPs connect to the ComEd system, and has developed a manual and a Web-site (http://www.comedtransmission.com) to assist IPPs with, among other things, interconnection issues. These developments reflect ComEd's long-term confidence in energy generation in Illinois.

- **ComEd's Fossil Sale Will Increase Competition**. In December 1999, ComEd completed the sale of approximately 9,700 MW of generating capacity to Edison Mission. The sale was accompanied by power purchase contracts that ensure ComEd's supply requirements for a five-year period. Edison Mission, through its subsidiary, Midwest Generation, L.L.C., supplied energy to ComEd during 2000 under the terms of such contracts. After the expiration of the contracts, Midwest Generation will be able to sell all of the energy from the plants to any buyer. By introducing a new competitor in the Illinois generating business, the sale supports the Customer Choice Law's goal of increased competition for the production of electric power and energy in Illinois and will facilitate the additional objective of supply choice for Illinois retail customers.

- **Midwest Independent System Operator ("ISO")**. On December 22, 2000, ComEd gave the Federal Energy Regulatory Commission ("FERC") notice of its intention to withdraw from the Midwest Independent Transmission System Operator ("MISO") and requested that FERC approve this decision by March 1, 2001. (FERC Docket No. ER01-780-000). ComEd also agreed to become a participant in the Alliance Regional Transmission Organization ("ARTO"), subject to such approval. ComEd believes that participating in ARTO will best resolve problems associated with regional loop flows, thereby enhancing reliability. ComEd also believes that participating in ARTO will not only improve transmission service for ComEd and its customers, but will foster robust wholesale competition for all by giving competitive electric suppliers and customers access to the important regions to the east of ComEd for a single non-pancaked rate. As the ICC is aware, a settlement has been reached with the MISO and other interested parties in FERC Docket No. ER01-123-000, that provides for the withdrawal of ComEd from the MISO to allow it to join the ARTO. FERC must still approve the settlement.

- **ComEd's Imbalance Trading Proposal**. In late 1999, ComEd secured FERC approval to implement innovative energy imbalance tariffs that accommodate the needs of retail customers and their suppliers, including customers with unusual and unpredictable load shapes. These competition-friendly tariffs have greatly contributed to the success of retail open access in ComEd's service territory. On February 7, 2001, FERC approved an update to these tariffs that takes into account Exelon's reorganization and prices energy imbalance service based upon the costs of purchases and sales of the type of underlying resources used to supply energy imbalance service.

- **Status of the Power Exchange**. ComEd has continued to encourage the development of a power exchange, the Automated Power Exchange ("APX"), in Illinois to promote a forum where physical electricity can be traded at prices visible to all market participants. Participation in the APX has not been as rapid as was originally expected. However, activity in the bilateral, over-the-counter spot transactions remains very strong. Next day forward spot transactions and intra-day hourly transactions continue to provide wholesale traders a forum for optimizing the value of short-term electric supply for physical delivery.

- **Transfer of Nuclear Plants to Genco & Power Purchase Agreement**. The transfer of ComEd's nuclear plants to Exelon Generating Company L.L.C., Exelon's wholly owned generation company, ("Exelon Genco") was substantially completed on January 12, 2001. In conjunction with that transfer, ComEd entered into a long-term agreement (the "Power Purchase Agreement", or "PPA") with Exelon Genco to purchase "full requirements" energy at fixed prices through 2004. In addition, during

the years 2005 and 2006 the PPA provides that the Genco shall provide to ComEd, and ComEd shall purchase from Genco, base-load electric energy and capacity from the transferred nuclear stations -- Byron, Braidwood, LaSalle, Quad Cities and Dresden – adequate to meet ComEd service obligations to its customers. The energy prices for the years 2005 and 2006 will be determined prior to 2005. The PPA establishes fixed prices to protect ComEd customers. It provides an important "hedge" against future electric spot market prices, which are often subject to rapid and unpredictable fluctuation.

Leading Regulatory Developments.

Since the General Assembly passed the Customer Choice Law, industry participants have worked hard to establish the foundations upon which competition for power and energy sales will rest. These foundational activities began immediately and continued unabated through 2000.

Replacing the Neutral Fact Finder. ComEd's new PPO and revised Customer Transition Charge ("CTC") tariffs, which incorporated market value energy credits derived from the new market value index ("MVI") methodology, took effect on May 1, 2000. The MVI methodology, which was developed through workshops populated by a significant number of stakeholders, responds to concerns raised by market participants over the level and lack of seasonality in the market value energy credits derived from the price information reported through the otherwise applicable Neutral Fact Finder ("NFF") process. Compared to the NFF process, the MVI methodology relies on more current and public data than the NFF process, results in market value credits that better reflect the seasonality of wholesale prices, and also results in lower CTCs for most customers. Several market participants had publicly predicted that without the type of changes found in the MVI methodology, competitive RESs would be unable to continue serving their customers over the summer months. With the implementation of the MVI methodology, customer choice continues to grow. In addition, Illinois RESs did not experience either the degree of provider dropout or "gaming" of utility tariffed services that occurred in some other parts of the country. Thus, ComEd believes that implementation of the MVI methodology has benefited both suppliers and customers and promoted the ongoing development of competition in the provision of retail electric services in Illinois.

Rulemaking. The transition to competition requires new rules to govern the relationships between suppliers, utilities, and customers in the restructured marketplace. To attract new suppliers to Illinois, the rules must be fair and user-friendly. Cumbersome rules can have a chilling effect on competition. The number of RESs doing business in Illinois suggests that the Illinois rules have struck the proper balance. Since January 1, 1998, the Commission has approved the following rules:

- **Accounting Rules**. These rules set new accounting requirements for gas and electric utilities (Section 7-206).

- **Reliability Rules**. These rules implement Section 16-125 of the Customer Choice Law, which imposes new liability on utilities for certain outages and requires Illinois utilities to report information relating to transmission and distribution reliability and investment.

- **Non-Discrimination Rules**. The Non-Discrimination or Affiliate Rules implement Section 16-121 of the Customer Choice Law and regulate the relationship between utilities and their affiliates engaged in the sale of retail electric supply. The rules also ensure non-discrimination in the services provided to the utility's affiliate and any RES.

- **Environmental Disclosure Rules**. These rules implement the quarterly environmental disclosure requirements relating to the sources of electricity supply and associated emissions (Section 16-127).

- **Municipal Tax Rules**. The tax rules govern requests for the Commission to promulgate alternative maximum municipal electric tax rates under Section 8-11-2 of the Municipal Tax Code, and to clarify the obligations of electric utilities with respect to the amendments to that Section of the Code (65 ILCS § 5/8-11-2).

- **ARES Certification Rules**. These rules set procedures which allow the Commission to assess the qualifications and fitness of ARES applicants who wish to serve non-residential customers with maximum loads of greater than one megawatt (Section 16-115(f)).

- **Unbundling of Metering Service**. During 2000, the Commission directed Illinois electric utilities, including ComEd, to provide a new utility service that would enable electric delivery services customers to purchase separately, on an "unbundled" basis, certain electric metering and billing services from non-utility suppliers.

  The new Metering Service Provider ("MSP") regulations, set forth in Part 460 of the Administrative Code, require MSPs to establish their financial, technical and managerial qualifications to provide service as conditions for certification. Once an MSP is certified and doing business, it is required to comply with data transfer, record keeping, electric metering and other requirements established by the Commission. Through the regulations, customers can be assured

that electric metering will be provided with basic safety, financial, and privacy safeguards regardless of the supplier of the services.

The new rules closely parallel the metering regulatory requirements for electric utilities, helping establish consistency of metering service as well as a fair basis for competition in providing unbundled delivery services. In order to facilitate competition for these unbundled delivery services, ComEd expended millions of dollars and many thousands of hours of its personnel and contractor time. ComEd's work included making its metering and related billing information systems and business practices, initially designed for ComEd as a fully integrated utility, interface and work with the information systems and work practices of other market participants. Through this process, ComEd is now able to exchange metering data and coordinate with Commission-certified MSPs authorized to provide competitive metering and billing service. While to date only one potential MSP has indicated an intention of providing unbundled delivery services in ComEd's service territory, ComEd is ready and able to provide these unbundled services in the new electricity market as ordered by the Commission.

The following rulemaking proceedings are pending:

- **Standards of Conduct.**

  Integrated Delivery Company Proposal. Under the Customer Choice Law, ComEd, like other Illinois utilities, may compete with ARESs for customers. On February 15, 2001, in the pending Standards of Conduct proceeding, the Commission approved rules, not yet final, under which ComEd could choose to operate as an Integrated Distribution Company ("IDC") and not to compete with RESs to retain retail energy customers. As an IDC, ComEd would focus its efforts on its role in easing the transition to a competitive retail supply market and strengthening and improving the infrastructure and systems that deliver electric power and energy. Exelon has been competing as an energy supplier through Exelon Energy, a certified ARES that is functionally and operationally independent from ComEd.

  Functional Separation Rules. On February 15, 2001, the Commission also approved rules, not yet final, as an alternative to the IDC rules, under which an Illinois electric